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WOMEN, VIOLENCE, AND THE LAW

HEARING

BEFORE THE

SELECT COMMITTEE ON
CHILDREN, YOUTH, AND FAMILIES
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, SEPTEMBER 16, 1987

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CONTENTS

Page

Hearing held in Washington, DC, on September 16, 1987 1

Statement of:

- Ewing, Dr. Charles Patrick, associate professor of law and psychology, State University of New York, Buffalo, NY 111
- Hart, Barbara, J., Esq., staff counsel, Pennsylvania Coalition Against Domestic Violence, Reading, PA 76
- Holtzman, Elizabeth, district attorney, Kings County, NY 29
- Martin, Sheila S., Washington, DC 16
- Lee, Rana, community education developer for Marin Abused Women Services, Novato, CA 5
- Pope, Det. Lt. Darrell H., commanding officer (retired), Sex Crime Unit, Michigan State Police, Pensacola, FL 143
- Sears, Alan E., former executive director, Attorney General's Commission on Pornography, legal counsel, Citizens for Decency Through Law, Inc., Scottsdale, AZ 49
- Walker, Lenore E., Ed.D., A.B.P.P., president and psychologist, Walker & Associates, Denver, CO 127

Prepared statements, letters, supplemental materials, et cetera:

- Coats, Hon. Dan, a Representative in Congress from the State of Indiana, and ranking minority member, submitting a fact sheet 178
- Ewing, Dr. Charles Patrick, associate professor of law and psychology, State University of New York, Buffalo, NY, prepared statement of 116
- Hart, Barbara J., Esq., staff counsel, Pennsylvania Coalition Against Domestic Violence, Reading, PA, prepared statement of 80
- Holtzman, Elizabeth, district attorney, Kings County, New York, prepared statement of 33
- Lee, Rana, community education developer for Marin Abused Women Services, Novato, CA, prepared statement of 9
- Martin, Sheila, S. Washington, DC, prepared statement of 18
- Miller, Hon. George, a Representative in Congress from the State of California and chairman, Select Committee on Children, Youth, and Families:
  - Opening Statement of 2
  - Polluting the Censorship Debate, a summary and critique of the final report of the Attorney General's Commission on Pornography, July 1986 chapters 2 and 8 158
  - "Women, Violence, and the Law," a fact sheet 3
- Pope, Det. Lt. Darrell H., commanding officer (retired), Sex Crime Unit, Michigan State Police, Pensacola, FL 147
- Schroeder, Elizabeth, special assistant, district attorney, letter to Select Committee on Children, Youth, and Families, dated December 21, 1987 . 187
- Sears, Alan E., legal counsel, Citizens for Decency Through Law, Inc., Scottsdale, AZ:
  - "Effects of Portrayals of Female Sexuality and Violence Against Women on Perceptions of Women", article entitled 67
  - Prepared statement of 55
- Stewart, James K., director, National Institute of Justice 172
- Walker, Lenore, E., Ed.D., A.B.P.P. president and psychologist, Walker & Associates, Denver, CO, prepared statement of 131

WOMEN, VIOLENCE, AND THE LAW

WEDNESDAY, SEPTEMBER 16, 1987

House of Representatives,
Select Committee on Children, Youth, and Families,
Washington, DC.

The Select Committee met, pursuant to call, at 9:15 a.m., in room 304, Cannon House Office Building, Hon. George Miller (chairman of the select committee) presiding.

Present: Representatives Miller, Boxer, Sawyer, Coats, Wolf, Johnson, Wortley, and Grandy.

Staff present: Ann Rosewater, staff director; Ginny duRivage, professional staff; Tim Gilligan, research assistant; Carol Statuto, minority deputy staff director; Evelyn Anderes, staff assistant (minority); and Joan Godley, committee clerk.

Chairman Miller. The Select Committee on Children, Youth, and Families will come to order.

The purpose of today's hearing is to start to cover the subject matter of women, violence, and the law.

Violence against women is an everyday occurrence in America. How our legal system treats those women who are the victims is the subject of today's hearing before the Select Committee on Children, Youth, and Families.

In the United States, a woman is beaten every 18 seconds. Every 3½ minutes, a woman is a victim of rape or attempted rape.

While we might expect, in 1987, that crime and violence draw no distinctions between men and women, our expectations are wrong. Nearly two-thirds of the violent crimes committed against men are committed by strangers. In contrast, more than half of all the violent crimes against women are committed by people they know, including family members.

When I first expressed concern about domestic violence a decade ago, one of my colleagues accused me of trying "to take the fun out of marriage." I am pleased to say that since then, Congress has enacted the Family Violence Prevention and Services Act and other programs to assist victims of rape and battery, including the "Sexual Abuse Act of 1986," which allows prosecution by spouses who have been raped on Federal territory.

But violence committed behind closed doors still gets an inconsistent response from our justice system, when it gets any response at all.

While domestic violence is considered a crime in most States, many police and judges continue to view spousal abuse as a purely private matter. And the vast majority of domestic disputes still do not result in arrest, despite evidence that arrest is their best deterrent.

Legal studies also show that in the majority of rape cases, the better the victim knows the assailant, the less likelihood he will be prosecuted. And in 35 States, where a husband and wife are living together, there are still many circumstances under which spousal rape is not a crime. In cases of "date" rape, a woman saying "no" to sex is not sufficient proof of nonconsent in the eyes of the law.

Women victims may be doubly jeopardized if they try to protect themselves. A battered wife who kills her husband to protect the lives of her children or herself is more likely to be convicted of murder than the husband who beats his wife to death.

Today's topic has been ignored for far too long. Because it is neither comfortable nor pleasant, it has been hidden by a cloak of silence.

For that reason, I am particularly impressed with the courage of our two witnesses, one from my home State of California, who have agreed to come forward and share their personal experiences with us.

We will also hear from scholars and legal experts, and we are especially pleased to welcome as one of our witnesses, Elizabeth Holtzman, a former colleague and the current District Attorney for Kings County, New York.

It is my hope that this hearing will contribute to greater understanding of the severity of family violence and the best legal remedies to protect its victims.

At this time, I would like to recognize members of the committee for any opening statements.

[Statement of Hon. George Miller follows:]

OPENING STATEMENT OF HON. GEORGE MILLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, SELECT COMMITTEE ON CHILDREN, YOUTH, AND FAMILIES

Violence against women is an everyday occurence in America. How our legal system treats those women who are victims is the subject of today's hearing before the Select Committee on Children, Youth and Families.

In the United States, a woman is beaten every 18 seconds; every three and one-half minutes, a woman is a victim of rape or attempted rape.

And while we might expect, in 1987, that crime and violence draw no distinctions between men and women, our expectations are wrong. Nearly two-thirds of the violent crimes committed against men are commited by strangers. In contrast, more than half of all violent crimes against women are committed by people they know, including family members.

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While domestic violence is considered a crime in most states, many police and judges continue to view spousal abuse as a purely private matter. And the vast majority of domestic disputes still do not result in arrest, despite evidence that arrest is their best deterrent.

Legal studies also show that in the majority of rape cases, the better the victim knows her assailant, the less likelihood that he will be prosecuted. And in 36 states, there are still many circumstances under which spousal rape is not a crime. In cases of "date" rape, a woman's saying "no" to sex is not sufficient proof of nonconsent in the eyes of the law.

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"Women, Violence, and the Law"—a Fact Sheet

VIOLENCE AGAINST WOMEN COMMON IN U.S.: MAJORITY COMMITTED BY RELATIVES, ACQUAINTANCES

In 1984, 2.3 million violent crimes (rape, assault, and robbery) were committed against women over age 12, compared with 3.6 million against males. (Bureau of Justice Statistics [BJS], Department of Justice, 1986)

In 1986, 57% of violent crimes committed against women were committed by nonstrangers, compared with 37% of violent crimes committed against men. (BJS, 1987)

77% of the victims of violent crimes committed by relatives are women. 70% of victims of violent crimes committed by strangers are men. (BJS, 1987)

Crimes committed by relatives are more likely to involve attacks and injury and are likely to require medical attention than crimes committed by strangers. (BJS, 1987)

DOMESTIC VIOLENCE ALSO COMMON: OFTEN INVOLVES RAPE

Between 1978 and 1982, 2.1 million women were victims of domestic violence at least once during an average 12-month period. One-third of domestic violence between 1978 and 1982 involved rape, robbery or assault. During the six-month period following an incident of domestic violence, 32% of the women were victimized again. (BJS, 1986)

In 1986, 30% of female homicide victims were killed by husbands or boyfriends. (Uniform Crime Reports, Federal Bureau of Investigation [FBI], 1987)

Battering and other physical violence were involved in 45% of the marital rapes reported in a representative sample of married women in Boston with children aged 6 to 14. (Finkelhor and Yllo, *License to Rape: Sexual Abuse of Wives*, 1985)

Of the women in a San Francisco study who were currently or formerly married, 21% reported that they were subjected to physical violence by a husband. (Russell, *Rape in Marriage*, 1982)

In a survey of women in the Rocky Mountain area who reported having been battered, 59% said they were forced to have sex with the batterer. (Walker, *The Battered Woman Syndrome*, 1984)

RAPE IS FASTEST GROWING VIOLENT CRIME; MAJORITY COMMITTED BY ACQUAINTANCES

In 1986, a woman was a victim of rape or attempted rape every three-and-a-half minutes, totalling more than 153,000 rape victims. 51.3% of completed rapes in 1984 were committed by nonstrangers. (BJS, 1986, 1987)

Between 1977 and 1986, the number of rapes reported to the police increased 43%, making rape the fastest growing violent crime in the country. (FBI, 1978 & 1987)

Nearly 45% of women in a San Francisco random sample reported that they were subjected to at least one rape or attempted rape in their lifetime. 82% of the rapes were committed by nonstrangers and two-thirds of the victims were assaulted by acquaintances or friends. (Russell, 1982; *Sexual Exploitation*, 1984)

Ten to 14% of the married or formerly married women were raped or sexually assaulted by their current or former husbands; 3% reported that they were raped or sexually assaulted by strangers. (Russell, 1982; Finkelhor and Yllo, 1985)

Young women ages 16–19 have the highest rape victimization rates; 20–24 year olds have the second highest rates. Eight percent of white women and 11% of black women are likely to be raped in their lifetimes. (Koss & Harvey, *The Rape Victim*, 1987; BJS, 1987)

One in eight women students reported experiences within the previous 12 months that met legal definitions of rape, according to an extensive three year survey. 84% of college students who were victims of completed rapes knew their assailant and two thirds of them were assaulted by a date (Koss, *Journal of Consulting and Clinical Psychology*, March 1987)

DOMESTIC VIOLENCE TAKES SERIOUS TOLL ON CHILDREN

A study of children in shelters for battered women found higher rates of child abuse in families where there is wife abuse then in other families. In 70% of the cases, the child abuse is committed by men. (Layzer et. al., Center for Women Policy Studies, 1986)

A Colorado study found that 53% of battering husbands abused their children. (Walker, 1984)

In a majority of states, judges are not required to consider proof of domestic violence in determining child custody. Ten states and the District of Columbia require spousal abuse to be considered in temporary and/or permanent custody decisions (Alaska, Arizona, California, Colorado, Florida, Illinois, Kentucky, Iowa, Texas, and Washington). (National Center on Women and Family Law [NCWFL], 1987)

Men and women who saw their parents physically attack each other were three times more likely to hit their own spouses than were those with non-violent parents. The sons of the most violent parents have a rate of wife-beating ten times greater than that of the sons of non-violent parents. (Straus, Gelles & Steinmetz, *Behind Closed Doors*, 1980)

LAWS INADEQUATE TO PROTECT WOMEN AGAINST RAPE AND DOMESTIC VIOLENCE

State laws vary regarding treatment of marital rape. In nearly 3/4 (36) of the states, under many circumstances it is legal for a husband to rape his wife. (NCWFL, 1987)

In 7 states, exemptions from prosecution for rape extend to cohabitants (Connecticut, Delaware, Iowa, Kentucky, Minnestota, Montana, West Virginia). In 5 states, a partial exemption extends to voluntary social companions with whom the victim has previously had sexual contact (Delaware, Hawaii, Maine, Montana, and Pennsylvania). (NCWFL, 1987)

Five states and the District of Columbia require mandatory arrest for domestic violence when police have probable cause to believe that a misdemeanor has been committed (Connecticut, Louisiana, Nevada, Oregon, and Washington). One state requires mandatory arrest when police have probable cause to believe that a felony has been committed (Maine). (NCWFL, 1987)

Eight states require mandatory arrest for restraining-order violations (Delaware, Maine, Minnesota, Nevada, North Carolina, Oregon, Washington State, and Wisconsin). (NCWFL, 1987)

VICTIMS OF ASSAULT BY ACQUAINTANCES UNLIKELY TO REPORT THE CRIME

Only 5% of women college students who reported forced sex during the previous year reported the incident to the police. (KOSS, 1987)

Less than 10% of rapes reported in the San Francisco survey had been reported to the police. (Russell, 1984)

A minority of rape victims who contacted rape crisis centers in Massachusetts reported their victimization to the police. (Waldron & Dodson-Cole, Mass. Dept. of Public Health, 1986)

POLICE COURTS FAIL TO REDRESS VIOLENCE AGAINST WOMEN BY HUSBANDS AND ACQUAINTANCES

Studies across the nation have found that rapes by acquaintances are two to five times less likely to result in an indictment than rapes by strangers. (Estrich, *Real Rape*, 1987)

In only 1.7% of domestic dispute calls to police in St. Petersburg is an arrest made. (*St. Petersburg Times*, 5/21/84)

Seventy percent of police officers interviewed said they completed written reports in fewer than 20% of domestic violence cases; 13% of the others said they never reported family disturbances. (Lerman, *Harvard Journal on legislation*, 1984)

A Minnestota study found that arrest is more effective in preventing further violence in cases of domestic dispute than either police mediation or separation of the parties for the night. (Sherman & Berk, *American Sociological Review*, 1984)

Revised, October 1987.

Chairman **Miller**. Congresswoman Johnson.

Mrs. **Johnson**. Thank you, Mr. Chairman.

I do not have a prepared opening statement, but I do want to say that this is an issue I was involved in very heavily as a State Senator and have been very pleased to represent the town of Torrington, Connecticut, where a very significant decision was made about a year ago, requiring holding the police accountable for their neglect of protection of women in danger from their husbands.

That decision is beginning to reverberate certainly in Connecticut, and I hope throughout the nation.

We are just beginning to be able to recognize that women who are battered are simply victims of crime and reflect that in our laws. I think this is an important hearing this morning and I do thank the witnesses, because it does take courage to face up publicly to the enormity of the physical and emotional abuse that many women have taken routinely for many years.

Thank you, Mr. Chairman.

Chairman **Miller**. Mrs. Boxer.

Mrs. **Boxer**. Mr. Chairman, I do not have an opening statement. I am just very pleased, again, that you are on the cutting edge of these important issues.

I also wanted to note that one of the first witnesses is from my congressional district and I want to welcome her.

Thank you, Mr. Chairman, for putting this together.

Chairman **Miller**. Thank you.

With that, we will call the first panel, which will be made up of Rana Lee, who is from Novato, California, and Sheila Martin, who is from Washington, D.C.

Ms. Lee, welcome to the committee. Thank you for your willingness to spend your time and tell us some of your experiences and some of your concerns.

Your written statement will be put in the record in its entirety and you can proceed in the manner in which you are most comfortable.

STATEMENTS OF RANA LEE, COMMUNITY EDUCATION DEVELOPER FOR MARIN ABUSED WOMEN SERVICES, NOVATO, CA

Ms. **Lee**. My name is Rana Lee. At the present time, I am Community Education Developer for Marin Abused Women Services in California. I am a 50-year-old mother of three and grandmother of three. I am an ex-battered wife and an incest survivor, having been molested many times as a child by an uncle.

Born and raised in Boston, I come from an upper middle-class home. My father is a retired dentist. I attended a private high school and was a sophomore in college when I met my first husband.

Six and a half years ago, I ran from my second husband. At that time, I weighed 98 pounds, was abusing cocaine, valium and alcohol, and was suicidal. My first marriage was emotionally abusive, never physical. My husband ranted and raved for 18 years. I could do nothing right.

If I left an ashtray on the left side of the coffee table, it belonged on the right. If the kids' rooms were messy, it was my fault. He threw things at me and the children, hit walls, broke doors and whittled down what little self-esteem I had left.

During those years, I was secretary of the PTA, on the Girl Scout Counsel, a Girl Scout leader, treasurer of my children's swim team, president of a Hadassah group and youth director in a temple.

I went to my parents after my two girls were born and told them I wanted a divorce. I wanted to come home. It was made very clear to me that that was out of the question. I was told to do better and make my marriage work.

Over these past six years, I have heard this story from hundreds of battered women. Their families blamed them. If they get hit, it was "What did you do to upset him?"

I tried. I stayed. I had a son. Things got worse. My husband became a professional gambler. I begged him to stop, to no avail. We moved to LA. He sold futures in whiskey that did not exist and ended up in Lompac Federal Prison for a year. Only when he was in prison did I feel safe enough to serve him with divorce papers.

My parents told me I had been a fool to marry him, and I knew it. I wanted to die. I went to see my doctor. He prescribed 10 milligrams of valium three times a day to calm me down because I could pay for it. He refilled it for five years, with no questions asked.

I was lonely and scared. My family told me I was stupid. They helped me out, but they pulled me down further and further talking about my failures.

I met my second husband the same year I divorced my first. He told me how wonderful I was and how he would help me raise my kids. He turned me on to cocaine and took me to his favorite bar to have fun. He also punched holes in the walls when angry and broke his hand by hitting the door of my daughter's car.

By this time, I felt, "This is the type of man I deserve."

On my wedding night, he threw me against the bathroom sink, pushed me onto my knees and forced me to perform humiliating, outrageous sex for hours, pulling my hair to the roots and slamming my head into the sink when I fought him. I begged him to stop, but he refused, dragging me to the bed and lying on me for what seemed ages. I fought, and I cried, and he laughed. He told me he was the boss and I now belonged to him, and he would hurt me and my children if I did not behave.

He bought me a huge bouquet of flowers the next day, crying that he was drunk and did not mean to hurt me.

The next three-and-a-half years were a nightmare.

I remember the time he wanted his dinner served the same time that I was supposed to pick up my 12-year-old son at the movies. There were no buses where we lived and it was dark. The movie was about two miles from my home. He grabbed me by the hair, bashing my head into the kitchen cabinets, giving me a concussion.

He took me to the hospital, crying all the way. He did not want to go to jail and I was afraid to press charges.

I told the hospital that I had fallen and hit my head on the kitchen table.

There were many incidents of marital rape, often after a beating. I never pressed charges out of fear.

At that time, I had no idea there were shelters for abused women and their children. I did not even realize I was an abused woman. There were no laws then on marital rape.

I was working as a bail bondsman at the time and therefore had contact with many police. I knew how they felt about dealing with domestic violence cases, listening to them complain bitterly about the women who called for help, and therefore I kept my mouth shut.

The fear of his hurting my children kept me with him for three years. Little did I know at the time that he had also raped my 14-year-old daughter. She told me about this at the age of 20 when she attempted suicide.

Pressing charges of rape is a very frightening thing for a woman. The burden of proof is still on her, and if it is a partner, the shame is even deeper.

Looking into the eyes of someone you thought you loved as he is raping you is something that I have tried to describe over and over again, but it is impossible to put it into words.

In California, the marital rape law was passed in 1979, but it must be reported within 90 days. In the last six months, 23 Marin Abused Women Services Shelter residents reported marital rape. None of them have pressed charges. The fear of what would happen to them on the witness stand is too deep. They are also afraid that their partners will find them and kill them. The shame is too deep and they say nothing.

Most women do not even realize that marital rape is against the law. In talking to police officers, I am finding that more and more of them do not know about this law. District attorneys tend to discourage prosecution because they think they will lose because they do not feel they have enough evidence.

Police officers, knowing this, do not want to make arrests.

The only way this could change is for us to get out the word that marital rape is against the law and for the judicial system to support the woman who presses charges, not discourage her.

My family and I have turned our lives around since leaving the abuse. I feel very fortunate. My daughter is a recovering drug addict, clean and sober for two years, a new mother and no longer suicidal.

I have been clean and sober for four years. I no longer am suicidal and, as you can see, I no longer weigh 98 pounds. I have learned to love myself and I love life.

I met people in the battered women's movement who encouraged me over and over again. It was hard. My son ended up living with my sister for three years. I had to sign a paper that I was an unfit mother for her to keep him in Massachusetts.

I had hit bottom. Death seemed the only answer. My daughter attempted suicide. I almost died in a car accident. But the strength that kept me going all those years kept me going then.

I have since appeared on the "Today Show," "Hour Magazine," the "Sally Jessie Raphael Show," and "NBC Nightly News," talking about prevention work with teens. I was also the Northern California United Way ad for 1986. I have spoken to over 6,000 high school students.

In 1984, I became the first domestic violence consultant for a school district in the United States, in Berkeley, California. I have produced 60 radio programs on the issue and have conducted anonymous surveys with over 3,000 Marin County high school students through a grant given to Marin Abused Women Services by the California office of Criminal Justice Planning. The results of the surveys will be in print in October.

Of the first 1,400 surveys, 36 percent of the girls told us they had been or were being abused. Of those 36 percent, 24 percent told us their primary abuser was their boyfriend. Many girls talk of rape, many blaming themselves.

It is the responsibility of this society to stop this. As adults, we think the children of this generation have different attitudes than we did, but this is not true.

This committee must do all it can to help stop violence in the home between intimate partners. Listen to what the battered women's movement has to say. The laws we have now would not have happened without the unpaid work of many of the women who make up the battered women's movement.

As you know, it took many years for Congress to enact legislation that grant moneys to some shelters. We still need more shelters and we need more Federal funding.

This cannot be done without the support of those who make the laws and those who enforce them. You can stop the harassment of the victim. Let women know the laws will protect them and not persecute them.

Thank you.

[Prepared statement of Rana Lee follows:]

PREPARED STATEMENT OF RANA LEE, COMMUNITY EDUCATION DEVELOPER FOR MARIN ABUSED WOMEN SERVICES, NOVATO, CA

At the present time I am Community Education Developer for Marin Abused Women Services in California, working primarily in the high schools on relationship abuse. I am a 50 year old mother of three and grandmother of three. I am an ex-battered wife and incest survivor, having been molested many times, as a child, by an uncle. Born and raised in Boston, I come from an upper middle-class home. My father is a retired dentist. I attended a private high school and was a sophomore in college when I met my first husband.

Six and one-half years ago I ran from my second husband. At that time I weighed 98 pounds, was abusing cocaine, valium and alcohol and was suicidal.

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During those years, I was secretary of the PTA, on the Girl Scout Council, a Girl Scout leader, treasurer of my children's swim team; president of an Hadassah group and youth director in a Temple.

I went to my parents after my two girls were born and told them I wanted a divorce. I wanted to come home. It was made very clear to me that that was out of the question. I was told to do better and to "make my marriage work." Over these past six years, I have heard this story from hundreds of battered women. Their families blamed them if they got hit, it was, "What did you do to upset him?"

I tried. I stayed. I had a son. Things got worse. My husband became a professional gambler. I begged him to stop, to no avail. We moved to Los Angeles. He sold futures in whiskey that didn't exist and ended up in Lompac Federal Prison for a year. Only when he was in prison, did I feel safe enough to serve him with divorce papers.

By this time my parents offered some help. But they told me that I had been a fool to marry him and I knew it. I wanted to die. I went to see my doctor. He prescribed 10 milligrams of valium three times a day to "calm me down." And because I could pay for it, he refilled it for five years with no questions asked. I was lonely and scared. My family told me I was stupid and they pulled me further and further down talking about my failure.

I met my second husband the same year I divorced my first one. He told me how wonderful I was. How he would help me to raise my kids. He turned me on to cocaine and took me to his favorite bar to have "fun." He also punched holes in walls when angry and broke his hand by hitting the door of my daughter's car.

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I was afriad to press charges. I told the hospital that I had fallen and hit my head on the kitchen table.

I knew he would come after me again. There were many instances of marital rape -- often after a beating. I never pressed charges out of fear. At that time, I had no idea there were shelters for abused women and their children. At that time I didn't realize I was an abused women. And there were no laws then on marital rape.

I was working as a bail bondsman at the time and therefore had contact with many police. I knew how they felt about dealing with domestic violence cases. Listening to them complain bitterly about the women who called for help, I therefore kept my mouth shut.

The fear of his hurting my children kept me with him for three years. Little did I know at the time that he had also raped my 14 year old daughter. She told me about this at the age of 20 when she attempted suicide.

Pressing charges of rape is a very frightening thing for a woman. The burden of proof is still on her, and if it is a partner, the shame is even deeper. Looking into the eyes of someone you thought you loved -- as he is raping you -- is something that I have tried to describe over and over again, but it is impossible to put into words.

In Califonia the marital rape law was passed in 1979. It is a misdemeanor and must be reported in 90 days. In the last six months, 23 residents of the Marin Abused Women Services Shelter reported marital rape. None of them have pressed charges. The fear of what would happen to them on the witness stand is too deep. They are also afraid that their partners will find them and kill them. The shame is too deep, they say nothing.

Most women don't even realize that marital rape is against the law. In talking to police officers, I am finding that more and more of them do not know about this law. District Attorneys tend to discourage prosecution because they think they will lose because they don't feel they have enough evidence. Police officers knowing this don't want to make arrest. The only way this could change is for us to get out the word that marital rape is against the law and for the judicial system to support the women who press charges -- not discourage them.

My family and I have turned our lives around since leaving the abuse. I feel very fortunate. My daughter is a recovering drug addict. Clean and sober for two years, a new mother and no longer suicidal. I have been clean and sober for four years. I am no longer suicidal and as you can see, I no longer weigh 98 pounds.

I have learned to love myself and to love life. I met people in the battered women's movement who encouraged me over and over again. It was hard. My son ended up living with my sister for three years. I had to sign a paper that I was an unfit mother for her to keep him in Massachusetts. I had hit bottom. Death seemed the only answer. My daughter attempted suicide; I almost died in a car accident. But the strength that kept me going through all those years kept me going then.

I have since appeared on the Today show; Hour Magazine; Sally Jessie Raphael, and NBC Nightly News talking about prevention work with teens. I was also in the Northern California United Way ad in 1986. I have spoken to over 6,000 high school students, became the first domestic violence consultant for a school district in the United States, in Berkeley. I have produced 60 radio programs on the issues and have conducted anonymous surveys with 3,000 Marin county high school students through a grant given to the Marin Abused Women Services by the California Office of Criminal Justice Planning. The results of the surveys will be in printed in October.

Of the first 1400 surveyed, 36% of the girls told us they had been or were being abused. Of those 36%, 24% told us their primary abuser was their boyfriend. Many girls talk of rape. Many blame themselves. It is the responsibility of this society to stop this. As adults we think the children of this generation have different attitudes than we did. But this is not true.

This Committee must do all it can to help stop violence in the home between intimate partners. Listen to what the battered women's movement has to say. The laws we have now would not have happened without the unpaid work of many of the women who make up the battered womens movement. As you know, it took many years for Congress to enact legislation to grant money to some shelters. We still need more shelters and more federal funding. This cannot be done without the support of those who make the laws and those who enforce them.

You can stop the harrassment of the victim. Let women know the laws and protect them. Not persecute them. They must be fair and equitable too.

Chairman **Miller**. Thank you.

Ms. Martin, welcome to the committee, and we appreciate your taking your time to be with us this morning. You may proceed in the manner in which you are most comfortable.

STATEMENT OF SHEILA S. MARTIN, WASHINGTON, DC

Ms. **Martin**. Thank you.

I am Sheila Martin, age 39, mother of three children and a native of Washington, D.C. I am here today speaking as a battered woman.

I met my husband, Mr. Martin, in the summer of 1983. He was an aspiring boxer, training for the 1984 Olympics. I was impressed by the goals Mr. Martin had set for himself and wanted very much to be a part of the accomplishment of these goals. During our courtship, Mr. Martin presented himself as caring and open. He wanted very much to be my partner. We began living together in the fall of 1983.

Almost immediately, I noticed a drastic change in his behavior. He was constantly demanding money for various reasons. When I expressed my concern that nothing positive was being accomplished, the response was physical abuse.

Mr. Martin would choke me until he rendered me unconscious. There were other physical attacks involving hitting, slapping and kicking. Many of these attacks were witnessed by my son, Sham. I tried to explain that these attacks were not our fault. They were the result of trauma Mr. Martin had experienced in his youth.

My son was not able to understand. What he understood was that the man who his mother loved beat her.

I married Mr. Martin in spite of the problems in our relationship because I believed the stability of a permanent relationship would give him the assurance he needed. In spite of my best efforts, the violence increased in both frequency and severity.

I was held hostage in my home on many occasions and not allowed to go to work. Abuse also took the form of rape. Mr. Martin would repeatedly force me into sexual intercourse against my will.

Since I knew that the District of Columbia had no laws pertaining to marital rape, prosecution for this crime was not possible. The police were called on numerous occasions to remove Mr. Martin from our home. I witnessed enormous tolerance for Mr. Martin's behavior. He received little more than a slap on the wrist for crimes that if committed by a friend or stranger, would have resulted in a felony charge.

Once the police were gone, Mr. Martin returned to abusing me. He believed, and continues to believe, that because I am his wife, he can treat me as he pleases.

My son began rebelling. He lost interest in school and demonstrated a total disrespect for me as an authority figure. In July of 1984, there was a fire in my home. I had just had Mr. Martin legally removed from my home. I found the timing of the fire very interesting. As a result of the fire, my son and I were separated.

By this time, Mr. Martin was definitely out of control. He was admitted to St. Elizabeth's Hospital for his drug and mental problems. While a patient, I allowed Mr. Martin to have home visits.

My son was totally against this, but I explained that, as a family, we had a responsibility to help Mr. Martin.

Mr. Martin began to drink, which quickly got out of control. He became physically abusive again. I turned to his mother for help. His mother was adamant that she did not want Mr. Martin in her home either.

By the end of 1984, I finally had Mr. Martin out of the home. I moved in March of 1985 and had no contact with Mr. Martin for the next four months. In July of 1985, I once again allowed Mr. Martin into my home, after promises that he had changed. Disaster followed.

My son was completely out of control. The abuse continued. Mr. Martin constantly stole money from me to buy drugs. The community where my family had been long-standing members began experiencing the effects of Mr. Martin's antisocial behavior.

I asked him on several occasions to seek professional help. These requests were met with either no response or physical abuse.

Mr. Martin was arrested on several occasions for robbery in 1986. I was embarrassed; my son was ashamed. We lived in constant fear.

My neighbors were constantly calling the landlord about the fighting in my home. Mr. Martin had been asked several times to leave the premises. His response was, "I am not going anywhere." He has broken the locks on the main entrance to my apartment building, as well as the locks on my own front door.

I have pursued every legal avenue available to me. The legal system is slow at best in resolving domestic problems. The process is time-consuming. It requires time away from work that many women cannot afford. This generally leads to conferences with the employer about so much time missed from work for personal problems.

The police department's general position is that of "hands off." In one ridiculous incident, I was not allowed to remove formula for the baby because the ownership was in question.

The domestic violence in my home left me one option: leave. There was no legal recourse that would protect me from Mr. Martin. Ironically, the only possible solution lies in having Mr. Martin committed to a mental hospital for his drug and mental problems. This, because his behavior was having an effect on the community, not my family.

My story continues. On Friday, September 11, 1987, Mr. Martin broke into my home and stole a radio and a hair dryer. On Saturday, September 12, he again broke into my home and destroyed furniture.

[Prepared statement of Sheila S. Martin follows:]

PREPARED STATEMENT OF SHEILA S. MARTIN, WASHINGTON, DC

I am Sheila Martin, age 39, mother of three (3) children and a native Washingtonian. I am here today speaking as a battered woman.

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Almost immediately I noticed a drastic change in his behavior. He was constantly demanding money for various reasons. When I expressed concern that nothing positive was being accomplished, the response was physical abuse. Mr. Martin would choke me until he rendered me unconscious. There were other physical attacks involving hitting, slapping, kicking. Many of these attacks were witnessed by my son Sham. I tried to explain that these attacks were not our fault, they were the result of trauma Mr. Martin had experienced in his youth. My son was not able to understand. What he understood was that the man who his mother loved beat her.

I married Mr. Martin in spite of the problems in our relationship because I believed the stability of a permanent relationship would give him the assurance he needed. In spite of my best efforts, the violence increased in both frequency and severity. I was held hostage in my home on many occasions not allowed to go to work. Abuse also took the form of rape. Mr. Martin would repeatedly force me into sexual intercourse against my will. Since I knew that the District of Columbia had no laws pertaining to marital rape, prosecution for this crime was not possible. The police were called on numerous occasions to remove Mr. Martin from our home. I witnessed enormous tolerance for Mr. Martin's behavior. He received little more than a "slap on the wrist" for crimes, if committed by a friend or stranger would have resulted in felony charges. Once the Police were gone, Mr. Martin would return to abusing me. He believed and continues to believe that because I am his wife he can treat me as he pleases.

My son began rebelling. He lost interest in school and demonstrated a total disrespect for me as an authority figure. In July of 1984 there was a fire in my home. I had just had Mr. Martin legally removed from our home. I found the timing of the fire very interesting. As a result of the fire, my son and I were separated.

By this time Mr. Martin was definitely out of control. He was admitted to St. Elizabeth's hospital for his drug and mental problems. While a patient, I allowed Mr. Martin to have home visits. My son was totally against this, but I explained that as a family we had a responsibility to help Mr. Martin.

Mr. Martin began to drink which quickly got out of control. He became physically abusive again. I turned to his mother for help. His mother was adamant that she did not want Mr. Martin in her home either. By the end of 1984, I finally had Mr. Martin out of the home. I moved in March of 1985 and had no contact with Mr. Martin for the next four (4) months. In July of 1985 I once again allowed Mr. Martin into my home after promises that he had changed. Disaster followed. My son was completely out of control. The abuse continued. Mr. Martin constantly stole money from me to buy drugs. The community where my family had been longstanding members began experiencing the effects of Mr. Martin's anti-social behavior. I asked him on several occasions to seek professional help. These requests were met with either no response or physical abuse. Mr. Martin was arrested on several occasions for robbery in 1986. I was embarrased, my son was ashamed. We lived in constant fear.

My neighbors were constantly calling the landlord about the fighting in my home. Mr. Martin had been asked several times to leave the premises. His response was "I am not going anywhere." He has broken the locks on the main entrance to my apartment building as well as the locks on my own front door.

I have pursued every legal avenue available to me. The legal system is slow at best in resolving domestic problems. The process is time consuming. It requires time away from work that many women cannot afford. This generally leads to conferences with the employer about so much time missed from work for personal problems. The Police Department's general position is that of "hands off." In one ridiculous incident I was not allowed to remove formula for the baby because the ownership was in question.

The domestic violence in my home left me one option--leave. There was no legal recourse that would protect me from Mr. Martin.

Ironically, the only possible solution lies in having Mr. Martin committed to a mental hospital for his drug and mental problems. This, because his behavior was having an effect on the community, not my family.

My story continues. On Friday, September 11, 1987, Mr. Martin broke into my home and stole a radio and hair dryer. On Saturday, September 12, 1987, he again broke into my home and destroyed furniture.

Chairman Miller. Thank you very much, both of you, for your testimony.

Ms. Lee, you mentioned that 23 residents of the Marin Abused Women's Service Shelter reported marital rape. They reported that, I assume, to be in compliance with law, that somebody advised them they should.

Ms. Lee. They reported it to us in our intake form, but they never went any further.

Chairman Miller. They never made a formal complaint?

Ms. Lee. No.

Chairman Miller. Is there any mechanism for counseling these women how to proceed should they desire to do so?

Ms. Lee. They could go to a sexual assault center and get some help.

Chairman Miller. In the District Attorney's office or——

Ms. Lee. They can go to a Victim Witness Advocate and discuss it, but many times they are discouraged. And they are so frightened. These are women who are in hiding.

Chairman Miller. Do you think that that fear is the biggest barrier to——

Ms. Lee. Fear is one of the barriers. Fear of being torn apart about their own personal—who they are, if they get on the stand, and what their lives are, instead of it being a crime and that the perpetrator—and fear of being killed.

Chairman Miller. You mentioned that you have gone through some 1,400 of the surveys of the 3,000 students in Marin County, so obviously it is not complete and the figure may change, but in terms of the number of women that reported abuse, I assume most of that is abuse by somebody they know?

Ms. Lee. Yes.

Chairman Miller. I mean, because of their age.

Ms. Lee. Either parents or a boyfriend. A few were stranger rape, I think one or two, but that was it.

Chairman Miller. Ms. Martin, what you are telling this committee is that you are a resident of D.C. Are you a resident of the District?

Ms. Martin. I am a Washingtonian, sir, yes.

Chairman Miller. What you are suggesting is that Mr. Martin, because of his marital status, enjoys a privilege from prosecution——

Ms. Martin. Yes, it appears that way to me.

Chairman Miller [continuing]. That if you report your husband for an assault or battery or even robbery of your property or keeping you from your property, that essentially you are told that that is a domestic matter and law enforcement cannot or will not respond to your complaints.

Is that accurate?

Ms. Martin. That is true, sir.

Chairman Miller. Even in the cases where you have, in fact, complained formally and directly about physical assaults against you?

Ms. Martin. Yes.

Chairman Miller. And the response has been what?

Ms. **Martin**. It is still "hands off." No criminal prosecution is immediately forthcoming. It has dragged on and on and on and it is still considered domestic. We should resolve that, either among ourselves——

Chairman **Miller**. Have the police been to your house——

Ms. **Martin**. On many occasions.

Chairman **Miller** [continuing]. At the time of violence, right after violence?

Ms. **Martin**. Right after violence——

Chairman **Miller**. What has been their response?

Ms. **Martin**. Either Mr. Martin was taken downstairs and talked to or had to pursue the fact that he had no reason being there and should be returned to the hospital anyway. He had no permission from me to be in the home on most of the occasions that he was there.

Chairman **Miller**. But essentially what you are saying is that even after repeated offenses—we have been told this in other instances of cases where women have been killed in domestic violence cases—the police in many instances have been to that address numerous times——

Ms. **Martin**. That is true, sir.

Chairman **Miller** [continuing]. Prior to that.

Ms. **Martin**. That is true. Many times. And it is a fearful environment and a fearful situation for a woman to find herself in, really, when there is no protection for her.

Chairman **Miller**. What you are telling us is that, essentially, you keep calling upon the law enforcement system to protect you——

Ms. **Martin**. The services of the law enforcement community in this city, yes, sir.

Chairman **Miller**. And they tell you that this is a domestic matter and they really have no jurisdiction?

Ms. **Martin**. That is true. On many occasions, that is how it was or they would refer me to the Civil Complaint Center. That is not a solution for the immediate problem.

Chairman **Miller**. A number of years ago, I spent some time riding with police officers in the District and in Northern Virginia, especially with those officers who might respond to domestic violence or domestic calls. The idea was that these officers would be trained to understand that, in fact, a lot of this is still criminal behavior.

Their argument was that you can take these people down and you can arrest them, but, as you both pointed out, your husband is going to come and make up with you and so you are just misusing the police department's time.

But you are suggesting that it does not even go that far; that they make that decision that, in a sense, they are playing judge and jury——

Ms. **Martin**. That is right.

Chairman **Miller** [continuing]. Right at the doorstep by telling you that he is not guilty of anything you say that he has done.

Ms. **Martin**. Yes, on many occasions, yes. That has been the attitude on many occasions in my particular situation.

Ms. **Lee**. We have had police—they will tell you that it is your fault, that you let him back in anyway, so what happened is your fault. You know, you took the chance in the hope to save this relationship, this family, but it was your fault you had him there. It is really his home, too, so why should they remove him from his home, even though your life might be in danger. Why should they?

Chairman **Miller**. Thank you.

Mrs. **Johnson**. Ms. Martin, did you file complaints or try to take legal action? Did you go to Legal Aid or try to find some way to lodge criminal actions against your husband in these situations?

Ms. **Martin**. Yes, I have. As I said before, it is a tedious process. It is long and drawn-out. Papers were served on many occasions on Mr. Martin, and most of the time, that was ignored. He had to be taken to the courts physically in order to respond to the issues that I was raising about what was occurring in the home.

Mrs. **Johnson**. So he would just ignore a lot of these things unless the authorities were willing to take the time to go get him, which, of course, they gradually lost interest in doing.

Ms. **Martin**. That is true.

Mrs. **Johnson**. So even where there is a law and a process and you use it, it fails to protect you.

Ms. **Martin**. Yes, it does. As it is now, yes. Yes, it does.

Mrs. **Johnson**. Ms. Lee, have you worked much—I know you have done this survey with these kids—but in the course of your work and with your own children—and I imagine some of your children's friends, you have found this about—have you thought about how we are going to get into the teenage community early?

Ms. **Lee**. I do it through the schools. We do it through the schools and we spend three days with every classroom that we go to and teach them the issues and the problems and hear them out.

Mrs. **Johnson**. Are you aware of any programs that are ongoing that have demonstrated their ability to prevent girls from entering into—to change the course of their life? Are we that far along anywhere?

Ms. **Lee**. No, not at this moment, except that I have done a pilot program—there are some other than mine, but we are one of the first—with nine high school girls. We spent a year this year on self-esteem, and two of them left abusive relationships by the end of that year and one of them said, "Well, I've got him so he no longer hits me; he just throws things," and she feels she has gotten somewhere.

All of them come from abusive homes and when they first met me said that they all thought that was it; that they deserved what was happening and it was a part of their lives. So they are just beginning to, but there are no programs and they are even cutting our funding.

Mrs. **Johnson**. How frequently do these kids that are involved in abusive relationships become pregnant?

Ms. **Lee**. I don't work for Planned Parenthood, but I would say that it was in the norm of whatever the figures are——

Mrs. **Johnson**. Then we really don't know anything about the relationship between teenage pregnancy rates and abusive relationships?

Ms. **Lee**. There has been no study that I know of up to this point.

Mrs. **Johnson**. Thank you. Thank you for your testimony here today and we look forward to working with you to see if we cannot get some resources out there that will be more effective to those who are victims, but also to our young women.

Chairman **Miller**. Congresswoman Boxer.

Mrs. **Boxer**. Thank you, Mr. Chairman.

Ms. Lee, it seems to me, in listening to your story, which is just hair-raising, there were two times, twice, where you really went to people who should have helped you to break out of this, it seems to me, and one of them is the time you went to your parents to please help and the response was, "It's your problem; you must be doing something wrong."

Was there anything, when you were growing up—I mean, you have bared your soul here, and I don't mean to press further, so if it is uncomfortable, don't answer it, but was there anything in your growing-up years that would give you the clue that if you went to your parents later, they would have that type of attitude?

Ms. **Lee**. No.

Mrs. **Boxer**. It really surprised you that you were rejected by them in that fashion?

Ms. **Lee**. They are very loving parents. My mother tells me now that she was afraid to have me come home because then they would have to help me with the children and she felt that I needed to make my marriage work because she had to live in her—you know, marriage is something where you make it work.

Mrs. **Boxer**. So in their minds, they took care of you until you were 18 or 20 and once you were out of school, that was your life, and there was not a continuum of care in a sense.

Then the second time, which really infuriates me, is when you went to the doctor and he put you on valium and essentially got you addicted to drugs. Is that not true?

Ms. **Lee**. Absolutely. And I have to tell you that from working with the shelter in the past two years, over half the women who come into our shelter have prescription drugs in their purses that are usually tranquilizers.

Mrs. **Boxer**. Right.

Mr. Chairman, I think this is an area—I do not know what we will do about it, but I have to say that I have heard more stories of doctors just doing the easy thing, which is to just prescribe drugs and walk away and say, "Oh, and you can refill them any time." I think it is particularly true when they are men dealing with female patients. I think it is an outrageous situation that we really ought to look further into.

The last point I wanted to share with you, because you have shared it with me, is this incredible survey that the chairman picked up on. For those who do not know this particular county, Marin County, where we live, this is one of the wealthiest counties in California and probably in the country. The minority population is about 1 percent. So we are talking about a situation here of wealthy, white, middle-class and upper-class people, where 36 percent of the teens surveyed said they were in some form of abusive relationship—or they have experienced some kind of abuse.

Ms. **Lee**. These are the girls. Over 51 percent of the students talked about some violence in their home or their relationships.

Mrs. **Boxer**. So this is obviously an issue that cuts across all lines and we have to do something, it seems to me. If it is not happening in the homes; if the kids are not feeling loved and have no self-esteem, we have to help groups like Marin Abused Women to do this.

Ms. Martin, I just had one question. I, again, am stunned by your story. It seems to me your only hope—and I know you do not want to do this—is to leave your community unless this man is locked up. You almost have to change your name and move away and—it is an unbelievable thing.

Ms. **Martin**. That is true.

Mrs. **Boxer**. Society is telling you, "Sorry, lady, you'll have to take care of it by becoming somebody else and leaving the home that you love." Do you think that is probably true unless things change and they put him away?

Ms. **Martin**. That is true. My feeling is now, why should I have to?

Mrs. **Boxer**. Right.

Ms. **Martin**. Why, as a woman, should this trauma be put on us? I don't think it is fair and I don't think it is right. There are children who have to restart their friendships and their social lives and it is not——

Mrs. **Boxer**. He is the one who should have to leave and change——

Ms. **Martin**. We need to face their responsibilities; that they are in error, and what society really expects of them.

Mrs. **Boxer**. Thank you very much, Mr. Chairman. These witnesses were superb.

Chairman **Miller**. Congressman Sawyer.

Mr. **Sawyer**. Thank you, Mr. Chairman.

My questions are really only two. Tell me if you are uncomfortable answering these kinds of questions.

Ms. Lee, if Ms. Martin were in your community, with the resources that you have available directly to you, and she came to you with the kind of problem that she has described, what would you be able to do in order to help her? How would you counsel her and how could you help her?

Ms. **Lee**. We would tell her her options and she would make her own choices as to what she wanted to do. We would help her get a restraining order and we would help her—she may stay in our shelter for six weeks, which is the maximum time she can stay with us, and we only can house 14 women and children at a time.

We can give her, you know, the legal system and hand her over to Victim Witness, but her chances, even in our county, are not great. Though they are better than some, they are not great.

We can help and stand by her, what decision she may make.

Mr. **Sawyer**. What would her chances be, even given the kinds of enlightened and relatively strong resources that you have?

Ms. **Lee**. Not good. A lot of our women go back because they have no place else to go. There is no housing; there is no money; they have children. They feel hopeless and they go back because there is no place else to go.

Mr. **Sawyer**. My second question, and either of you may feel free to answer this one, let's assume for a moment that this is the same community and that we represent the police department, the court system, the legislature's capacity to enact laws: what would you tell us that we need to do in Marin County in order to help you deal with the problem with which we deal this morning.

Ms. **Lee**. More funding to get our programs larger and give us more support to back the laws that are sitting there, but nobody is there to support us.

Mr. **Sawyer**. It is not a matter of changing the laws; it is a matter of——

Ms. **Lee**. Some of them still have to change also, but at least getting even that far. We are still working to change the laws, the custody laws. The batterer can still have visitation rights with his children when he is battering his partner and she has to take the child over there.

Mr. **Sawyer**. Is that a pivotal point because of the leverage that the child represents?

Ms. **Lee**. Absolutely.

Mr. **Sawyer**. What other kinds of questions——

Ms. **Lee**. She cannot leave the county sometimes with the child because he has made it clear, through the law. He gets an order that she is to stay in that county with his children. Therefore, she is there.

Also, there is a lot of shame. You do not feel good about yourself, and you are asked to bare your soul to men in the judicial system who do not want to hear it.

Mr. **Sawyer**. Are there differences just in the immediate kind of response you get from law enforcement agencies that you have been able to detect or sense or even measure between the way in which male and female police officers respond in these circumstances?

Ms. **Lee**. Sometimes even the female officers are worse.

Mr. **Sawyer**. Is that right?

Ms. **Martin**. Yes.

Mr. **Sawyer**. Less sensitivity.

Ms. **Lee**. Less sensitivity, absolutely.

Ms. **Martin**. Very much, I think. In the particular case about even removing the baby's formula and the question of ownership of that, it was a female officer making this kind of statement who was there at the request of the court to assist me.

Mr. **Sawyer**. Those dollars that you mentioned, those would be directed toward residential alternatives to the home; is that kind of problem——

Ms. **Lee**. Also towards those of us who are working to change the laws and self-esteem work we are doing in the high schools. I think the answer is going to be in prevention. It is going to be in educating our young people that it is not okay and that this can change and that it is a learned behavior and that boys can learn a different way, and that there are alternatives and they need to learn it before they are our age. They need to learn it when they are really young.

We do not have the funding to continue even our program by the end of this year. That is it. We are out of the schools and the kids don't hear us anymore.

Mr. **Sawyer**. Thank you, Mr. Chairman.

Chairman MILLER. Let me just comment. Your answer was more funding to get programs in place, but you can have all the programs you wanted—and we are going to hear about some programs that other jurisdictions use—but until you have confidence that the law is going to treat you with all of the diligence that you are entitled to after suffering an aggravated assault or a battery and physical abuse, it seems to me that not a lot is going to happen.

Each of you has gone through the experience, I believe, of going to an advocacy program, a shelter program, that has laid out to you what your situation was. In both instances, you start out your testimony suggesting this was normal. You thought this was normal behavior and then you realized at some point that even if it was normal, you could not accept it. Then you found out that it was not normal.

But at the end of the story, as sophisticated as you became, you still find out that the law is set up in a fashion that it really does not recognize these crimes. One of the reasons this hearing is taking place is that there are a lot of new publications right now that suggest that that is, in fact, the rule rather than the exception. In most jurisdictions, either formally or informally, the law does not respond in these instances of violence against women.

I wrote the legislation to provide Federal help for shelters, but when we get all done with that, if you then send them on their way to the district attorney's office or to a court system where you tell them, "Next time, you have the absolute right to protect yourself by calling the county sheriff," and they just look at you, that program is not going to help.

I think we have to back up for a moment here because, you know, we are all interested in prevention, and this committee has been dedicated to that; but we are also a little interested in deterrence. As we are starting to see in some jurisdictions where the rules are hard and fast and men are starting to appreciate that there may be a price paid, there is some indication that some of that behavior may be changed. It may not be accepted, but changed.

I just wanted to amplify on that point, that while we seek funding, the point that I think this hearing is trying to get at is whether or not the law, as it is currently on the books, which is supposed to be gender-neutral, is working.

We will take a break and go vote and I will come back for the next panel.

[Recess.]

Chairman MILLER. The next panel that the committee will hear from will be the Honorable Elizabeth Holtzman, District Attorney for Kings County, New York; Alan E. Sears, former Executive Director of the Attorney General's Commission on Pornography and Legal Counsel for Citizens For Decency Through Law, from Scottsdale, Arizona; and Barbara Hart, Co-Director of the National Clearinghouse on Battered Women's Self Defense and Staff Counsel, Pennsylvania Coalition Against Domestic Violence from Reading, Pennsylvania.

I did not get an opportunity, because of the quick recess for the vote, to thank Ms. Lee and Ms. Martin for their rather graphic testimony of what it means to live in the violent domestic situation in far too many jurisdictions in this country. The committee very much appreciates their willingness to come forth and to tell us their story.

Elizabeth, thank you for joining us. We appreciate you taking your time from your busy schedule as District Attorney in New York to share with us some of your concerns and also some of the things that your office is doing with respect to this problem of how women are treated in these violent situations.

You may proceed in the manner in which you are most comfortable.

STATEMENT OF ELIZABETH HOLTZMAN, DISTRICT ATTORNEY, KINGS COUNTY, NY

Ms. HOLTZMAN. Thank you very much, Mr. Chairman. It is a special pleasure and privilege for me to be back here, and especially before you and this committee.

I have a prepared statement which I would ask be incorporated in full in the record and I will try——

Chairman MILLER. It will be, without objection.

Ms. HOLTZMAN [continuing]. To summarize some of the points that I make.

First, I think it is important to recognize that violence against women exists in epidemic proportions in American society. It is also important to recognize that this violence takes a number of forms, always drawing inspiration and sustenance from deeply engrained prejudice and stereotypes about women and their role in society.

Marital rape is one of the most extreme manifestations of prejudicial attitudes towards women. Marital rape, as you have heard from the testimony of witnesses, is not a mere bedroom squabble. It is a violent and forcible assault on the bodily integrity of the woman; it is an act of humiliation and degradation, often involving extreme violence and often perpetrated in front of children.

Despite the gravity of marital rape, it is still not treated everywhere as a crime. Today it is still legal in various circumstances for a man to rape his wife in 36 States of this nation. Thus, in almost three-quarters of the States, a man who rapes his wife is not guilty of a crime, no matter how brutal the assault.

The fundamental legal premise underlying the right of marital rape is the notion that a woman, once married, becomes the property of her husband. It is incredible that any law in 1987 should embody the view that a person is the property of any other person. But in one form or other, the marital rape laws in 36 States do.

However, in the last few years, there have been some positive developments with respect to the problem of marital rape. A number of States have moved to reject, abolish or limit marital rape exemptions by legislation or court decision. In 1984, New York State's highest court declared the marital rape exemption unconstitutional. I am proud to have filed an amicus brief in that case, but it is a testament to the lack of understanding of the importance of this issue that I was the only prosecutor in New York State to do so.

On the negative side, it is important to recognize that there is a trend now going the other way. In fact, a number of States in the last few years have actually expanded the marital rape exemption to encompass couples living together and even to voluntary companions.

These changes seem to reflect the dangerous belief that once a woman says yes to a man, she gives up the right ever to say no. These trends must be understood and combatted.

Marital rape is only one form of violence perpetrated against women in American society. Domestic violence is another. The FBI has estimated that one spouse or lover is beaten every 18 seconds in America; that as many as 6 million women are battered every year.

Violence against women has an ancient derivation. You may be interested to know that the expression, "the rule of thumb," comes from the shameful tradition embodied in common law that made it legal for a man to beat his wife as long as the stick was not wider than his thumb.

One of the important things to note is that domestic violence and abuse perpetuates itself. Studies have found that about three-quarters of male abusers were themselves abused as children and that a majority of boys who witnessed violence at home grow up to abuse their mates.

Furthermore, wife-battering may lead sons to avenge their mother's pain. Sixty-three percent of males aged 11 to 20 who commit homicide kill the man who abuses their mother.

[For updated statistics, see letter dated December 21, 1987, on page 187.]

Among prisoners, between 75 and 90 percent were abused as children, strongly suggesting a link between victims of domestic violence and crime in general.

Domestic violence can have other effects. Five hundred eighty-six men were killed by their wives or girlfriends last year, almost always as a response to being beaten. There have been some studies that have suggested that abused children, and those who witness abuse, have higher suicide rates than other children who are not so exposed.

A New York City study found that one-half of the women who attempt suicide and those who actually kill themselves are battered women. Part of the problem in dealing with domestic violence is, as you have noted, the problem of the response of the criminal justice system. Just recently in New York a task force reported on the problem of treatment of women in the courts and they found that, too often, judges, court personnel and law enforcement officials were indifferent to the criminal nature of domestic violence.

To quote, "Many judges would ask victims: 'What did you do to deserve this beating,' or 'Why don't you just kiss and make up,' " questions that would be unthinkable if the case involved another violent crime.

Let me suggest an agenda of things that need to be done. First, police response. It is crucial, it seems to me, that the police respond aggressively and vigorously and properly. A Minnesota study has found that a mandatory arrest policy seemed to reduce the number of repeat incidents of domestic violence. It is important that that experience be replicated; that arrests be the prime method of response; and the Federal Government encourage localities to adopt that policy and help evaluate implementations of the policy to make sure that it is working effectively.

We need to have an integrated criminal justice response. In my office, felony domestic violence cases are handled by specially trained assistant district attorneys. In addition, we have, with another agency, developed training programs and trained judges who handle misdemeanor cases in Brooklyn. We are currently trying to extend the training program, but we have not only encountered resistance to an expansion of the training program to other judges. Unfortunately, the training of prosecutors and judges in general is not the norm. Even when there are training programs, they do not specifically focus on domestic violence.

Another recommendation goes to the issue of the availability of orders of protection. When a woman is being battered, she needs immediate relief and it is often very difficult to get judges to respond properly by issuing an order of protection promptly.

My office has done various things in this respect. One is that we have developed methods to speed up the process of issuing orders of protection in Brooklyn. In addition, we worked with the courts to establish a special program which has, since November of 1986, handled over 1,500 cases of battered women; 99 percent of those cases involved the issuance of an order of protection on the very same day.

Orders of protection need to be issued in the language that the woman can understand. We have seen tragic circumstances where a woman was issued an order of protection in English, was not English-speaking, and did not know the significance of the order. Therefore, she did not use it to protect herself. We urged the courts in New York to provide orders of protection translated into Spanish, and that is now taking place. We think that is important.

We also think that is important for the judges to understand and for prosecutors to try to argue for a woman's right to stay in the home. As a standard procedure in appropriate cases, we argue at the time the order of protection is issued, or even later if it is necessary, that it is not the woman who should be forced out of the home, even though the home or apartment may not belong to her, but that the batterer should be forced to move.

Shelters. Obviously, there is a tremendous need for additional shelters.

We also need more effective sentencing programs. One of the problems that we have discovered is that many women do not want to see their husbands imprisoned. They want the violence to stop; they want the relationship to continue on a nonviolent basis, but they will not cooperate if it involves putting their husbands in prison.

As a consequence, we developed a program which involves a court order sentencing the batterer to a treatment program. If necessary, as part of the sentence, the batterer will be required to undertake alcohol or drug abuse treatment as well.

We think these programs are extremely successful, but unfortunately, there is a three-month waiting list for defendants in Brooklyn to get into this program. And, there are very few programs of this kind around the country. These kinds of programs need to be funded, because in the absence of such court-ordered sentencing programs in battering cases, we will find that many, if not the majority, of these cases will proceed without any court resolution. The situation will then be the same as before the woman brought charges and she will be subjected to continued, if not intensified, battering.

We need early intervention programs. We are now involved in two pilot programs in Brooklyn. One involves stationing counselors in police precincts so that a woman who calls, even if she is not asking for police intervention, can get information on what she can do; what referrals there are, social agencies, shelters and the like.

A second program involves having an assistant district attorney and a family violence advocate assess each case and try to arrange appropriate kinds of counseling and other help. We also need more programs to provide counseling and assistance to victims of domestic violence.

In the end, of course, we need to deal with the problem of women's standing in society. Violence against women is the most visible and perhaps most odious form of discrimination against women, and it is largely a symptom of the broader refusal of the society we live in to recognize the humanity and dignity of women that derives from a recognition of their equality.

This will not be a truly just society, we will not resolve the problems of violence against women until we are prepared to root out the prejudices from which it springs.

[Prepared statement of Elizabeth Holtzman follows:]

PREPARED STATEMENT OF ELIZABETH HOLTZMAN, DISTRICT ATTORNEY, KINGS COUNTY, NY

I WISH TO THANK THE COMMITTEE FOR THE OPPORTUNITY TO TESTIFY THIS MORNING ON THE CRUCIAL PROBLEMS OF MARITAL RAPE AND DOMESTIC VIOLENCE.

VIOLENCE AGAINST WOMEN EXISTS IN EPIDEMIC PROPORTIONS IN AMERICAN SOCIETY. THIS VIOLENCE TAKES A NUMBER OF FORMS, ALWAYS DRAWING INSPIRATION AND SUSTENANCE FROM DEEPLY INGRAINED PREJUDICE AND STEREOTYPES ABOUT WOMEN AND THEIR ROLE IN THE SOCIETY.

MARITAL RAPE IS ONE OF THE MOST EXTREME MANIFESTATIONS OF PREJUDICAL ATTITUDES TOWARD WOMEN. MARITAL RAPE IS NOT A MERE BEDROOM SQUABBLE. IT IS A VIOLENT AND FORCIBLE ASSAULT ON THE BODILY INTEGRITY OF A WOMAN. IT IS AN ACT OF HUMILIATION AND DEGRADATION, OFTEN INVOLVING EXTREME VIOLENCE, AND OFTEN PERPETRATED IN FRONT OF CHILDREN.

ONCE RAPE IS UNDERSTOOD AS A CRIME OF VIOLENCE, IT IS APPARENT HOW DEVASTATING A BLOW MARITAL RAPE IS TO ITS VICTIMS. THE BRUTALITY OF THE ASSAULT IS COMPOUNDED BY THE MAGNITUDE OF THE BETRAYAL AND THE DIFFICULTY OF ESCAPE. AS DAVID FINKELHOR, A FAMILY VIOLENCE EXPERT AT THE UNIVERSITY OF NEW HAMPSHIRE, PUT IT, "WHEN YOU'RE RAPED BY A STRANGER, YOU HAVE TO LIVE WITH A FRIGHTENING NIGHTMARE. WHEN YOU'RE RAPED BY YOUR HUSBAND, YOU HAVE TO LIVE WITH YOUR RAPIST."

INDEED, PSYCHOLOGICAL STUDIES, BY DIANA RUSSELL AND OTHERS, HAVE FOUND THAT THE HARM CAUSED BY MARITAL RAPE CAN BE GREATER THAN THAT CAUSED BY STRANGER RAPE. MARITAL RAPE, ALONG WITH CHILD ABUSE BY A RELATIVE, MAY HAVE THE MOST SEVERE AND LONGLASTING EFFECTS OF ANY FORCIBLE SEXUAL EXPERIENCE.

YET DESPITE THE GRAVITY OF MARITAL RAPE, IT IS NOT TREATED EVERYWHERE AS A CRIME. TODAY, IT IS STILL LEGAL UNDER VARIOUS CIRCUMSTANCES FOR A MAN TO RAPE HIS WIFE IN 36 STATES. IN ALMOST 3/4 OF THE STATES IN THIS NATION, A MAN WHO RAPES HIS WIFE IS NOT GUILTY OF A CRIME, NO MATTER HOW BRUTAL THE ASSAULT.

THE FUNDAMENTAL LEGAL PREMISE UNDERLYING THE "RIGHT" OF MARITAL RAPE IS THE NOTION THAT A WOMAN, ONCE MARRIED, BECOMES THE PROPERTY OF HER HUSBAND. AS NEW YORK STATE HIGHEST COURT NOTED: "THE VARIOUS RATIONALES WHICH HAVE BEEN ASSERTED IN DEFENSE OF THE [MARITAL RAPE] EXEMPTION ARE ... BASED UPON ARCHAIC NOTIONS ABOUT THE CONSENT AND PROPERTY RIGHTS INCIDENT TO MARRIAGE." THUS, A WIFE HAS NO SEXUAL AUTONOMY OR BODILY PRIVACY IN MARRIAGE, AND A HUSBAND MAY USE EVEN THE MOST VIOLENT MEANS TO ENFORCE HIS RIGHT TO HAVE SEXUAL RELATIONS WITH HER AT WILL.

IT IS INCREDIBLE THAT ANY LAW IN 1987 SHOULD EMBODY THE VIEW THAT A PERSON IS PROPERTY. BUT, IN ONE FORM OR ANOTHER, LAWS IN 36 STATES DO.

THE FULL EXTENT OF THE PROBLEM OF MARITAL RAPE IS STILL UNKNOWN. ACCORDING TO PRELIMINARY SURVEYS IN BOSTON AND SAN FRANCISCO, BETWEEN 10 AND 14% OF MARRIED WOMEN HAVE BEEN RAPED BY THEIR HUSBANDS. ONE STUDY FOUND THAT ONE-THIRD OF THE WOMEN LIVING IN TEMPORARY SHELTERS REPORTED HAVING BEEN RAPED BY THEIR HUSBANDS.

OF COURSE, FEW STATISTICS EXIST, IN PART BECAUSE MARITAL RAPE REMAINS LEGAL IN MANY STATES. EVEN WHERE MARITAL RAPE IS A CRIME, MANY PEOPLE DO NOT REPORT IT. NOT SURPRISINGLY, VICTIMS THEMSELVES OFTEN SHARE SOCIETY'S ATTITUDES ABOUT MARITAL RAPE. BECAUSE OF A PROFOUND LACK OF SELF-WORTH, WOMEN MAY THINK THAT THEY HAVE NO RIGHT TO OBJECT TO FORCED SEX WITH THEIR HUSBANDS, EVEN IN STATES WHERE MARITAL RAPE IS A CRIME. THEY MAY FEEL THAT THEY ARE AT FAULT. IN ADDITION, WOMEN MAY BE SO ASHAMED BY THE HUMILIATION THEY HAVE SUFFERED THAT THEY DO NOT REPORT THE RAPE.

CLEARLY, IF MARITAL RAPE IS TO BE COMBATED IN OUR SOCIETY, THE ANTIQUATED NOTIONS OF WOMEN AS PROPERTY EMBODIED IN STATE LAWS MUST BE ELIMINATED, AND MARITAL RAPE MUST BE TREATED AS THE SERIOUS ASSAULT THAT IT IS. UNFORTUNATELY, RECENT TRENDS IN MARITAL RAPE LAW REFORM ARE MIXED.

ON THE POSITIVE SIDE, SEVERAL STATES HAVE MOVED IN THE LAST FEW YEARS TO REJECT, ABOLISH OR LIMIT THE MARITAL RAPE EXEMPTION BY LEGISLATION OR COURT DECISION. IN 1984, NEW YORK'S HIGHEST COURT DECLARED THE STATE'S MARITAL RAPE EXEMPTION UNCONSTITUTIONAL. MY OFFICE FILED AN AMICUS BRIEF ARGUING FOR SUCH A DECLARATION; WE WERE THE ONLY PROSECUTOR'S OFFICE IN THE STATE TO DO SO. IN 1985, THE GEORGIA SUPREME COURT HELD THAT THERE IS NO MARITAL RAPE EXEMPTION IN THAT STATE.

ON THE NEGATIVE SIDE, IN SOME STATES, A SEXUAL ASSAULT BETWEEN HUSBAND AND WIFE IS NOT CONSIDERED RAPE UNLESS THE PARTIES ARE LEGALLY SEPARATED. THIS IS CLEARLY INADEQUATE, SINCE A WOMAN OUGHT TO BE PROTECTED FROM A HUSBAND WHO ATTACKS HER, REGARDLESS OF WHAT THE LEGAL RELATIONSHIP IS BETWEEN THEM.

IN OTHER STATES, MARITAL RAPE IS TREATED AS A MISDEMEANOR, EVEN THOUGH OTHER RAPES ARE TREATED AS FELONIES. THIS, TOO, IS UNACCEPTABLE, AND ONLY REINFORCES THE STEREOTYPED BELIEF THAT RAPE OF ONE'S WIFE IS LESS SERIOUS THAN RAPE OF ANOTHER WOMAN.

THE MOST DISTURBING DEVELOPMENT OF ALL IS THAT SOME STATES HAVE ACTUALLY EXTENDED THE MARITAL RAPE EXEMPTION TO ENCOMPASS COUPLES LIVING TOGETHER AND EVEN "VOLUNTARY SOCIAL

COMPANIONS." THESE CHANGES SEEM TO REFLECT THE DANGEROUS BELIEF THAT ONCE A WOMAN SAYS "YES" TO A MAN, SHE GIVES UP THE RIGHT EVER TO SAY "NO."

THESE TRENDS MUST BE UNDERSTOOD AND COMBATED. I URGE THE MEMBERS OF THIS COMMITTEE TO PLAY A ROLE IN HELPING TO EDUCATE AMERICANS ABOUT THE GRAVITY OF MARITAL RAPE AND ACQUAINTANCE RAPE.

MARITAL RAPE IS ONLY ONE FORM OF VIOLENCE PERPETRATED AGAINST WOMEN IN AMERICAN SOCIETY. TODAY, ALTHOUGH IT IS NO LONGER LEGAL FOR MEN TO BEAT THEIR WIVES, SUCH DOMESTIC VIOLENCE IS STILL WIDELY ACCEPTED AND APPALLINGLY WIDESPREAD.

THE FBI HAS ESTIMATED THAT ONE SPOUSE IS BEATEN EVERY 18 SECONDS, AND THAT AS MANY AS SIX MILLION WOMEN ARE BATTERED EVERY YEAR. THIS VIOLENCE DOES NOT CONSIST OF "LOVE PATS": BETWEEN 2,000 AND 4,000 WOMEN DIE EACH YEAR FROM INJURIES INFLICTED ON THEM BY HUSBANDS OR LOVERS. FURTHERMORE, WIFE BEATING CAUSES MORE INJURIES TO WOMEN REQUIRING HOSPITALIZATION THAN ALL RAPES, MUGGINGS AND AUTOMOBILE ACCIDENTS COMBINED.

THIS VIOLENCE HAS AN ANCIENT DERIVATION. HISTORICALLY, IN ADDITION TO SEXUAL DOMINATION AND CONTROL, MEN HAD THE LEGAL RIGHT TO OBTAIN THEIR WIFE'S SUBMISSION BY FORCE.

FOR EXAMPLE, THE EXPRESSION "RULE OF THUMB" COMES FROM THE SHAMEFUL TRADITION EMBODIED IN COMMON LAW THAT MADE IT LEGAL FOR A MAN TO BEAT HIS WIFE AS LONG AS THE STICK WAS NOT WIDER THAN HIS THUMB.

WHAT ARE THE ATTITUDES UNDERLYING THE PERSISTENCE OF DOMESTIC VIOLENCE ON SUCH A VAST SCALE? MANY MEN STILL BELIEVE THEY HAVE THE RIGHT TO CONTROL, AND DEMAND OBEDIENCE FROM, THEIR WIVES AND LOVERS AND TO USE FORCE TO SECURE THEIR DEMANDS. MANY ALSO BELIEVE THAT WOMEN NEED TO BE SHOWN WHO'S BOSS, AND THAT "REAL" MEN DO NOT HESITATE TO USE FORCE.

TOO OFTEN THE BATTERED WOMAN ACCEPTS A VIOLENT STATUS QUO. SHE MAY BELIEVE HER HUSBAND HAD THE RIGHT TO BEAT HER; SHE MAY BLAME HERSELF FOR PROVOKING VIOLENCE; SHE MAY HAVE SEEN DOMESTIC VIOLENCE AS A CHILD AND THOUGHT IT NORMAL BEHAVIOR; SHE MAY BELIEVE THAT SHE MUST ACCEPT THE BEATINGS IF HER MARRIAGE IS TO REMAIN INTACT.

EXTERNAL CIRCUMSTANCES MAY ALSO TRAP WOMEN IN VIOLENT MARRIAGES OR RELATIONSHIPS. MANY PEOPLE ASK OF DOMESTIC VIOLENCE VICTIMS: "WHY DON'T YOU JUST LEAVE?" ONE GROUP WORKING WITH BATTERED WIVES ANSWERS WITH THE FOLLOWING SCENARIO: YOU ARE A WIFE WHO HAS BEEN BADLY BEATEN AND YOUR HUSBAND HAS THREATENED TO KILL YOU. YOU HAVE NO CREDIT

CARDS, JUST $20 AND ENOUGH MONEY TO BUY BUS TICKETS FOR YOURSELF AND THREE CHILDREN. YOU TAKE THE BUS TO A PLACE FAR FROM HOME TO ESCAPE YOUR HUSBAND, BUT YOU FIND THAT NO LANDLORD WILL RENT YOU AN APARTMENT, SINCE YOU DON'T HAVE A JOB. IN SOME CIRCUMSTANCES, YOU MAY BE ABLE TO FIND A SHELTER FOR YOURSELF, BUT NO ONE HAS 4 SPACES OPEN FOR YOU AND YOUR CHILDREN. YOU CANNOT QUALIFY FOR WELFARE, SINCE YOU HAVE NO PERMANENT ADDRESS. YOU CALL YOUR HUSBAND AND HE EITHER APOLOGIZES FOR HIS PAST BEATINGS AND PROMISES TO CHANGE, OR ELSE HE TELLS YOU HE WILL HUNT YOU DOWN AND KILL YOU IF YOU DO NOT COME HOME TO HIM. HOW LONG DO YOU THINK YOU CAN LAST?

THE EFFECTS OF BATTERING, AS WELL AS OF MARITAL RAPE, ARE DEVASTATING NOT ONLY TO THE VICTIM, BUT ALSO TO HER FAMILY. BATTERING CREATES A CYCLE OF VIOLENCE THAT MAY TAKE GENERATIONS TO ELIMINATE. IN MANY MARITAL RAPE CASES, THE CHILDREN ARE SOMEHOW INVOLVED; SIMILARLY, 50% OF KNOWN CASES OF WIFE BATTERING ALSO INVOLVE CHILD ABUSE.

IT SHOULD COME AS LITTLE SURPRISE THAT SUCH ABUSE PERPETUATES ITSELF; STUDIES HAVE FOUND THAT ABOUT THREE QUARTERS OF MALE ABUSERS WERE THEMSELVES ABUSED AS CHILDREN, AND THAT A MAJORITY OF BOYS WHO WITNESS VIOLENCE AT HOME GROW UP TO ABUSE THEIR MATES. AMONG PRISONERS, BETWEEN 75

AND 90% WERE ABUSED AS CHILDREN, STRONGLY SUGGESTING A LINK BETWEEN VICTIMS OF DOMESTIC VIOLENCE AND CRIME IN GENERAL.

DOMESTIC VIOLENCE CAN HAVE OTHER, OFTEN UNANTICIPATED, EFFECTS. 586 MEN WERE KILLED BY THEIR WIVES OR GIRLFRIENDS LAST YEAR, ALMOST ALWAYS AS A RESPONSE TO BEING BEATEN. THE MASSACHUSETTS DEPARTMENT OF YOUTH SERVICES FOUND THAT ABUSED CHILDREN AND THOSE WHO WITNESS ABUSE HAVE HIGHER SUICIDE RATES THAN OTHER CHILDREN WHO ARE NOT SO EXPOSED. FURTHERMORE, A NEW YORK CITY STUDY FOUND THAT ONE HALF OF THE WOMEN WHO ATTEMPT SUICIDE AND OF THOSE WHO ACTUALLY KILL THEMSELVES ARE BATTERED WOMEN.

DESPITE THE DEVASTATING EFFECTS OF DOMESTIC VIOLENCE, THE CRIMINAL JUSTICE SYSTEM HAS TOO OFTEN FAILED TO RESPOND ADEQUATELY, IN PART BECAUSE THE SOCIAL ATTITUDES THAT LEGITIMIZE BATTERING ARE FOUND IN THE SYSTEM. THE RECENT NEW YORK STATE TASK FORCE REPORT ON WOMEN IN THE COURTS, FOR EXAMPLE, CITED SEVERAL INSTANCES IN WHICH JUDGES, COURT PERSONNEL, AND LAW ENFORCEMENT OFFICIALS WERE INDIFFERENT -- OR WORSE -- TO THE CRIMINAL NATURE OF DOMESTIC VIOLENCE. MANY JUDGES ASKED VICTIMS "WHAT DID YOU DO TO DESERVE THIS BEATING?" OR "WHY DON'T YOU JUST KISS AND MAKE UP?", QUESTIONS THAT WOULD BE UNTHINKABLE IF THE CASE INVOLVED ANOTHER VIOLENT CRIME. THESE ATTITUDES ARE PRESENT IN COURTROOMS THROUGHOUT THE NATION.

THE RESPONSE OF THE CRIMINAL JUSTICE SYSTEM TO DOMESTIC VIOLENCE IS ALSO HINDERED BY THE RELUCTANCE OF MANY VICTIMS TO COME FORWARD TO TESTIFY OR TO ENGAGE IN PROSECUTION AT ALL. HERE AGAIN, ECONOMIC AND EMOTIONAL DEPENDENCE ON THE BATTERER, SHAME AND GUILT MAY PLAY A ROLE, AS WELL AS THREATS ABOUT WHAT WILL HAPPEN IF THE WOMAN GOES THROUGH WITH PROSECUTION.

WHAT CAN BE DONE TO STOP DOMESTIC VIOLENCE AND TO EASE THE PLIGHT OF ITS VICTIMS? I URGE THE ADOPTION OF THE FOLLOWING RECOMMENDATIONS:

1) POLICE RESPONSE. WHEN A BATTERER IS TREATED LIKE A CRIMINAL AND ARRESTED, HE BEGINS TO UNDERSTAND THAT HIS BEHAVIOR IS CRIMINAL, WHICH CAN GO A LONG WAY TOWARD DETERRING FUTURE BATTERING. A LANDMARK STUDY IN MINNESOTA FOUND THAT A MANDATORY ARREST POLICY FOR POLICE ENCOUNTERING DOMESTIC VIOLENCE REDUCED THE NUMBER OF REPEAT SPOUSE ABUSE CALLS BY 47 PERCENT BETWEEN 1982 AND 1984. SINCE THAT TIME, DOZENS OF POLICE DEPARTMENTS ACROSS THE NATION -- INCLUDING NEW YORK CITY'S -- HAVE ADOPTED MANDATORY ARREST POLICIES.

NONETHELESS, THE FEDERAL GOVERNMENT OUGHT ACTIVELY TO ENCOURAGE MORE LOCALITIES TO ADOPT MANDATORY ARREST POLICIES. FURTHERMORE, SUCH POLICIES MUST BE MONITORED TO ENSURE THAT THEY ARE BEING ENFORCED, AND EVALUATED SO THAT THE POLICIES MAY BE IMPROVED WHERE NECESSARY.

2) INTEGRATED CRIMINAL JUSTICE RESPONSE. IF BATTERERS ARE TO BE DETERRED, THEY MUST GET A CLEAR MESSAGE FROM ALL LEVELS OF THE CRIMINAL JUSTICE SYSTEM THAT THEIR VIOLENCE IS A SERIOUS CRIME. THEREFORE, PROSECUTORS, JUDGES, COURT PERSONNEL AND LAW ENFORCEMENT OFFICIALS MUST BE TRAINED TO RECOGNIZE THE GRAVITY OF DOMESTIC VIOLENCE, TO UNDERSTAND THE NEED FOR APPROPRIATE SENTENCING, TO RECOGNIZE THE EFFECTS OF DOMESTIC VIOLENCE ON FAMILIES, AND TO UNDERSTAND THE SPECIAL NEEDS OF ITS VICTIMS.

MY OFFICE HANDLES FELONY DOMESTIC VIOLENCE CASES THROUGH A SEPARATE BUREAU STAFFED BY SPECIALLY TRAINED ASSISTANT DISTRICT ATTORNEYS. IN CONJUNCTION WITH THE VICTIM SERVICES AGENCY, WE HAVE PROVIDED TRAINING ON DOMESTIC VIOLENCE FOR JUDGES HANDLING MISDEMEANOR CASES IN BROOKLYN, AND ARE CURRENTLY WORKING TO EXTEND TRAINING TO JUDGES HANDLING FELONIES.

SUCH TRAINING OF PROSECUTORS AND JUDGES IS HARDLY THE NORM, IN NEW YORK CITY OR ELSEWHERE. GENERALLY, EVEN WHERE TRAINING PROGRAMS EXIST, THEY ARE OPTIONAL AND DO NOT DEAL SPECIFICALLY WITH DOMESTIC VIOLENCE. IN FACT, WE ENCOUNTERED SERIOUS RESISTANCE IN TRYING TO EXPAND OUR TRAINING PROGRAMS TO OTHER JUDGES. IT IS VITAL THAT

LEGISLATORS AND OTHER OFFICIALS WORK TO ENSURE SENSITIVITY TOWARD DOMESTIC VIOLENCE THROUGHOUT THE CRIMINAL JUSTICE SYSTEM.

3) AVAILABILITY OF ORDERS OF PROTECTION. IN MANY NON-ARREST CASES OF DOMESTIC VIOLENCE, THE STRONGEST PRIORITY IS TO STOP THE BATTERING IMMEDIATELY. THIS CAN BE DONE BY A COURT'S ORDER OF PROTECTION, FORBIDDING THE HUSBAND TO CONTINUE HIS CONDUCT ON PENALTY OF CONTEMPT.

TOO OFTEN VICTIMS FIND IT DIFFICULT TO GET ORDERS OF PROTECTION FOR A VARIETY OF REASONS. SOMETIMES JUDGES ARE RELUCTANT TO GIVE ORDERS OF PROTECTION, UNDER THE MISTAKEN BELIEF THAT THEY WILL DO NO GOOD. SOMETIMES RED TAPE DELAYS THE GRANTING OF AN ORDER.

MY OFFICE FROM THE BEGINNING WORKED TO SPEED UP THE ISSUANCE OF ORDERS OF PROTECTION. WE SUBSEQUENTLY ESTABLISHED A METHOD OF SECURING MANY ORDERS OF PROTECTION THROUGH A SEPARATE MAGISTRATES PART. UNDER THIS SYSTEM, THE VICTIM IS ASSIGNED AN ADVOCATE WHO ACCOMPANIES HER TO THE COURT AND REQUESTS THE ORDER OF PROTECTION. SINCE THIS PROGRAM WAS ESTABLISHED IN NOVEMBER 1986, IT HAS HANDLED OVER 1500 CASES OF BATTERED WOMEN; IN 99% OF THEM ORDERS OF PROTECTION WERE OBTAINED ON THE SAME DAY.

I BELIEVE THAT THIS COMMITTEE SHOULD URGE SIMILAR EFFORTS NATIONWIDE TO EASE THE GRANTING OF ORDERS OF PROTECTION AND SHOULD DISSEMINATE THE INFORMATION SO THAT THESE METHODS CAN BE ADOPTED.

4) ACCESSIBILITY OF ORDERS OF PROTECTION. IT IS CRUCIAL THAT, IF ORDERS OF PROTECTION ARE TO BE USEFUL IN PROTECTING BATTERED WOMEN, THEY BE IN THE LANGUAGE OF THE VICTIM. TRANSLATIONS INTO SPANISH AND OTHER FOREIGN LANGUAGES MUST BE MADE AVAILABLE BY COURTS AS IS NECESSARY.

IN NEW YORK, MY OFFICE FOUGHT FOR TRANSLATED ORDERS OF PROTECTION INTO SPANISH, AND WE GOT THEM. OTHER LOCALITIES CAN DO THE SAME.

5) WOMAN'S RIGHT TO STAY IN THE HOME. IF WHEN SECURING AN ORDER OF PROTECTION, A BATTERED WOMAN IS FORCED OUT OF THE HOME, SHE IS EFFECTIVELY PUNISHED FOR HAVING BEEN BEATEN, AS WELL AS FOR HAVING COME FORWARD. TO AVOID THIS, MY OFFICE FOLLOWS A STANDARD PROCEDURE OF ADVOCATING THAT A VICTIM BE ALLOWED TO STAY IN THE HOME OR APARTMENT IN ALL APPROPRIATE CASES EVEN IF IT BELONGS TO HER BATTERER. WE DEVELOPED FOUR SPECIAL LEGAL MOTIONS WITH WHICH TO ARGUE A VICTIM'S RIGHT TO STAY IN THE HOME. OTHER PROSECUTORS SHOULD MAKE THE SAME EFFORTS.

6) SHELTERS. WHILE THE NUMBER OF SHELTERS FOR BATTERED WOMEN AND CHILDREN HAS RISEN IN THE LAST FEW YEARS TO ABOUT 1200 NATIONWIDE, SPACE IS STILL FAR TOO SCARCE. ACCORDING TO THE NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, FOR EVERY ONE BATTERED WIFE OR CHILD WHO FINDS SPACE IN A SHELTER, TWO ARE TURNED AWAY. CONGRESS MUST MAKE INCREASED SHELTER SPACE A PRIORITY TO AID THE VICTIMS -- WOMEN AND CHILDREN -- OF DOMESTIC VIOLENCE.

7) EFFECTIVE SENTENCES. THERE MUST BE EFFECTIVE TREATMENT PROGRAMS AVAILABLE FOR SPOUSE ABUSERS. IN MANY CASES, A VICTIM OF BATTERING DOES NOT WANT HER HUSBAND TO GO TO JAIL, BUT SHE DOES WANT THE VIOLENCE TO STOP. ALLOWING JUDGES TO SENTENCE ABUSERS TO TREATMENT PROGRAMS NOT ONLY WILL ENCOURAGE THE COOPERATION OF VICTIMS, BUT WILL OFFER REAL HOPE THAT THERE CAN BE AN END TO THE VIOLENCE. WITHOUT THESE SENTENCING OPTIONS, VICTIMS MAY NOT CO-OPERATE -- THERE WILL BE NO PROSECUTION OR COURT SENTENCE, AND THE VIOLENCE WILL SIMPLY CONTINUE.

TO MEET THIS NEED, MY OFFICE AND THE VICTIM SERVICES AGENCY INITIATED A PROGRAM CALLED "ALTERNATIVES TO VIOLENCE." UNDER THIS PROGRAM, COURTS SENTENCE BATTERERS TO A TREATMENT PROGRAM ON HOW TO AVOID FUTURE VIOLENCE. (WHEN APPROPRIATE, THEY ARE ALSO SENTENCED TO ENTER DRUG AND ALCOHOL TREATMENT PROGRAMS.) APPARENTLY, THE OFFENDERS WHO COMPLETE THESE PROGRAMS DO NOT REENTER THE SYSTEM AS RECIDIVISTS.

HOWEVER, THERE IS CURRENTLY A 3 MONTH WAITING LIST FOR THE "ALTERNATIVES TO VIOLENCE" PROGRAM, AND SIMILAR PROGRAMS ARE SORELY NEEDED IN OTHER JURISDICTIONS.

8) VICTIM COUNSELING. VICTIMS OF MARITAL RAPE AND DOMESTIC VIOLENCE ARE AMONG THE MOST TRAUMATIZED OF ALL CRIME VICTIMS, AND REQUIRE SPECIAL COUNSELING. WE HAVE ARRANGED FOR COUNSELING FOR VICTIMS IN BROOKLYN, BUT, IN GENERAL, THIS TYPE OF COUNSELING IS INADEQUATELY FUNDED THROUGHOUT THE COUNTRY. THIS MUST CHANGE.

9) EARLY INTERVENTION PROGRAMS. IN MANY CASES, PROVIDING IMMEDIATE HELP TO A FAMILY IN WHICH ABUSE IS OCCURRING MAY REDUCE OR PREVENT FURTHER VIOLENCE, AND HELP VICTIMS ENTER AND STAY IN THE CRIMINAL JUSTICE SYSTEM. BROOKLYN HAS TWO EARLY INTERVENTION PROGRAMS DESIGNED TO DO EXACTLY THAT. ONE PROGRAM STATIONS COUNSELORS IN POLICE PRECINCTS TO HELP VICTIMS WHO SIMPLY CALL THE POLICE LOOKING FOR ADVICE AND INFORMATION. THESE COUNSELORS PROVIDE REFERRAL SERVICES TO VICTIMS WHO MAY NOT YET BE READY TO PROSECUTE.

A SECOND PROGRAM PROVIDES VITAL SERVICES FOR VICTIMS IN ARREST AND SUMMONS CASES. AN ASSISTANT DISTRICT ATTORNEY AND A FAMILY VIOLENCE ADVOCATE ASSESS EACH FAMILY'S NEEDS

AND ARRANGE NEEDED ASSISTANCE, INCLUDING COURT ADVOCACY, COUNSELING, TRANSPORTATION TO AND FROM COURT, FOOD, AND DAY CARE SERVICES. OUR PROGRAM IS ONE OF ONLY 8 NATIONWIDE, AND RECEIVES SOME FEDERAL FUNDING FROM THE BUREAU OF JUSTICE ADMINISTRATION.

I URGE THIS COMMITTEE TO MAKE MORE FUNDING AVAILABLE FOR COMPARABLE PROGRAMS.

10) WOMEN'S STANDING IN SOCIETY. WHILE VIOLENCE AGAINST WOMEN IS THE MOST VISIBLE AND PERHAPS MOST ODIOUS FORM OF DISCRIMINATION AGAINST WOMEN, IT IS LARGELY A SYMPTOM OF A BROADER REFUSAL BY THE SOCIETY WE LIVE IN TO RECOGNIZE THE HUMANITY AND DIGNITY OF WOMEN THAT DERIVES FROM A RECOGNITION OF THEIR EQUALITY. THIS DISCRIMINATION IS EMBODIED IN OUR VERY CONSTITUTION WHICH, EVEN AFTER 200 YEARS, STILL REFUSES TO RECOGNIZE WOMEN'S EQUALITY. WOMEN ARE MISTREATED IN THE WORKPLACE, WITH LOWER WAGES, DISCRIMINATION IN HIRING AND PROMOTIONS, AND SEXUAL HARASSMENT. WOMEN DOMINATE THE RANKS OF THE POOR IN AMERICA -- ROUGHLY TWO-THIRDS OF THOSE LIVING IN POVERTY ARE WOMEN. WOMEN REMAIN SORELY UNDERREPRESENTED IN PUBLIC OFFICE AND AT THE TOP OF OTHER SOCIAL INSTITUTIONS. AND TELEVISION AND OTHER MEDIA BOMBARD US WITH IMAGES OF WOMEN AS OBJECTS AND PROPERTY TO BE MANIPULATED BY MEN. UNTIL EVERY ASPECT OF OUR CULTURE THAT DENIGRATES WOMEN IS IDENTIFIED AND

ELIMINATED, WE CANNOT CLAIM ENOUGH PROGRESS. THIS WILL NOT BE A TRULY JUST SOCIETY UNTIL AMERICANS CONFRONT AND ROOT OUT THE DEEP SEATED AND SHAMEFUL ATTITUDES WHICH HAVE CONDONED AND ENCOURAGED VIOLENCE AGAINST WOMEN FOR TOO LONG.

THANK YOU.

Chairman MILLER. Thank you.
Mr. Sears.

STATEMENT OF ALAN E. SEARS, FORMER EXECUTIVE DIRECTOR, ATTORNEY GENERAL'S COMMISSION ON PORNOGRAPHY, LEGAL COUNSEL, CITIZENS FOR DECENCY THROUGH LAW, INC., SCOTTSDALE, AZ

Mr. SEARS. Mr. Chairman, thank you for inviting me to appear today.

Very briefly, I have filed a lengthy written statement with numerous attachments which I would like to refer the committee to.

Just as a little background, I was a city prosecutor. I dealt with victims of domestic violence. I was a Federal prosecutor. I prosecuted people in the organized crime distribution of obscene material. I dealt with pornography issues in an extensive way and worked with State prosecutors.

From July of 1986 to the present, I have been—when the commission expired—I have been involved in traveling across the country. I have been in 34 States. I have made 300 public appearances on related matters. I have met with hundreds of prosecutors, police officers, victims, victims assistance coordinators and others who are concerned with the problem of violence against women in our society and the lack of legal remedies.

Earlier, actually last year, this committee, all the members and all the members of Congress, were provided with a copy of the final report of the Attorney General's Commission on Pornography. I am sure, as the members have reviewed that report, they have found that what the press accounts and the critics had to say about the report were substantially different from the true contents.

One of the most important sections of that report was the account of 300 courageous women who had the courage to do as the two women who were here earlier this morning did, to come forward and tell the story of their abuse, their silence, their shame, which in their life related to the abuse promulgated in part by pornography.

We do not speculate; we do not pretend to claim that pornography is the major cause, or the sole cause of domestic and other violence against women. However, we know it is a real and significant and substantial cause.

The 300 women that came before the commission, either in written form or in 100 personal interviews, and those that testified in person by the committee, were the subject of ridicule and shame from the organized crime-backed pornography industry. I stated in my written statement and I make the statement here today: It is my opinion, based upon my law enforcement experience as a Federal prosecutor, chief of the criminal section in the U.S. Attorney's Office, as an assistant U.S. attorney, as a city prosecutor and now as an attorney in a public-interest law firm working full-time in this area, that there is no major interstate distributor of obscene, illegal material, that is not either a member, associate or otherwise affiliated with organized crime.

I saw significant financial resources come to bear during the work of the commission to again attempt to silence those women who would come forward. The women were told that they were "anecdotes" and I think if you read the accounts and even some of the local reports of the commission, you saw that the women were criticized as victims of alcohol abuse, victims of their own inability to cope with societal problems, and I think the women here this morning illustrated how they had been shuffled aside and were told by authority figures, by people in the enforcement system and elsewhere that their problems were somewhat of their own creation.

That is what we found to be the case with many of the women who were involved with the violence relating to pornography.

The pornography industry views women as chattel. I think they view women as objects. They view them as property that can be traded and used and abused.

In my brief statement and in the commission report, we detail at length the abuse of women in the production end of this industry. This is not a consensual business where people enter into an arms-length contract and agree to become engaged. I think there needs to be a significant concern for the women in the industry as a whole. There are bills before this Congress now that deal with some of those problems (S. 703/H.R. 1213).

Secondly, I think we need to deal with some societal attitudes where we accept that it is an acceptable alternative for women to be engaged in this form of traffic in their flesh and that somehow, these women are viewed as "consenting adults", despite the record to the contrary.

There are a very few number of women who perhaps have truly "consented" and are happy to be in "the business", but they are very minute in quantity.

I want to talk for a few minutes about some of the kinds of things we learned in the commission about violence as it relates to some of the subjects here this morning: marital rape, and spousal abuse.

We heard from many women about the kinds of things their husbands would do, their boyfriends would do; and I want to highlight a few of those for the committee's discussion this morning.

First of all, in the public health realm, I know that many people in this room are probably aware, even here in Washington, D.C., of the so-called "adult bookstores." This speaker this morning says that an adult bookstore is inappropriately named. I think that is a kind term. I think they more appropriately are called "training centers for sexual abuse."

We know that in those establishments, not only are women viewed as objects for abuse and for the pure sexual use and pleasure objects of men, but we know that many men go into these establishments to engage in sexual relations. Here in Washington, D.C., I have personally been in these establishments. I have personally viewed the behavior that goes on. There are those who would like to say that this is a behavior limited to one segment of the community, to a particular sexual preference, such as a group of homosexual males, and therefore, because in the disrespectful view of those persons, they do not like that group of society, leave them to have their own problem. But we found this crosses all lines. Not only do we have people that belong to the homosexual minority involved in abuse of themselves and others in these establishments; we have many heterosexual males who go into the establishments, have anonymous sexual relations through these holes in the wall with other males who go home to transmit whatever it is they catch, including sexually transmitted disease, AIDS, whatever, transmit this to their innocent wife, girlfriend or even their children.

We had many accounts before the commission of exactly that kind of behavior. In the last year, I have met several persons who are dying of AIDS at this time. The source of that was the transmission through the pornographic industry, through the contact in the so-called "adult bookstores," which are viewed as just innocent fun in many of these communities.

Women in our society are put at significant health risks, which I consider to be a form of violence, even though we do not hit them, we do not batter them. It is, perhaps, even more deadly.

Then, as far as the more overt types of violence, we had many accounts of women that ranged from the simple use of pornography, thrusting it before them to humiliate them, to talk about how they do not look as beautiful as these other women look; why is it that you are not as pretty as this woman is; why, after you had those kids, did you gain that 30 pounds? You can lose it; she did; here is her story. Here is what women prefer to do.

They read the polls, the surveys, the charts that are produced in pornography to tell them what "normal" is and they tell their spouse she is abnormal if she will not perform in that area. So we have the—what I would call "oral abuse," the destruction of the personality of a human being by the constant tearing down through the use of pornography.

Then we move to the more violent. We have the male who brings this material and coerces his girlfriend or his wife or his date into engaging in behavior that is depicted in pornography. He explains it is normal and, through, perhaps, use of drugs, alcohol, other means, he works to lower the woman's inhibitions to cause her to engage in things that are not only physically harmful to her, harmful to her health, but very humiliating, and I think some of the women here this morning—I do not know if any pornography was ever involved in their relationships—talked about some of the kinds of sexual acts that husbands are known to do to their wives.

Then we have even the worse, and that is the fellow—and we have many cases where they were beyond the stage of discussion, beyond the stage of convincing—who would, for example, tie their wives with the ropes, with the knots that they learned from pornography. There are books on sale that my staff purchased here in Washington, D.C, called "How to Rape a Woman," and "How to Molest a Child." People, of course, argue that these are protected materials and should in no way be "censored."

These materials tell us how to do various things to woman, how to abuse their bodies, how to tie them up, how to keep them from talking later, how to make yourself available to find victims and other means. We found hundreds of cases of males who acted out the material from pornography.

I put in my statement a statement from Milwaukee City Police Officer, Michael Krzeninski, a detective with the Sexual Assault

Unit there, who has been working in the pornography field since the 1970s, as well as handling sexual assaults. Basically what Mike does, when he gets his caseload caught up in the sexual assault field, is ~~go~~ out and check out what is for sale in the pornographic outlets.

Mike told the story last week to an audience in Milwaukee that I was present at—I talked to him at great length about how sexual assault has changed in recent years, both in the domestic field, in the date-rape situation, and in the stranger situation, where the victims now are being subjected to abuse that, in substantial ways, correlates to the abuse that is depicted in pornography.

In fact, he began to see how the language that women were called during the rape situations began to even be the language that was the language of choice of the pornographers during that period of time. I do not like this term, but Mike said that, "We used to have what were called 'softcore' types of assaults," and now he sees an ever-increasing number of very violent, very brutal, very cruel assaults that go far beyond the more limited kinds of sexual abuse that would take place in earlier years.

I would ask the committee to review the testimonies of many of these women and I would like to submit for the record Phyllis Schlafly's Book, "Pornography's Victims"—and I do not ask the committee to endorse anyone's politics, but Phyllis Schlafly had the interest to do what no one else in the country did. She took testimonies of a number of the victims before the commission, and without any editorialization, reprinted the words of those courageous women, boys and girls, who were willing to come forward and tell it to the committee.

[The book "Pornography's Victims" is retained in committee files.]

I would like to submit that book for the record in this hearing. I did not submit it earlier.

We found that pornography is used to lower the inhibitions of many of our victim children. In child pornography cases in Los Angeles County, police officers testified that since they began to ask the question, over 95 percent of the children involved in that activity had had pornography used as part of the softening up or the inhibition-lowering process to seduce them and induct them into this activity.

You say, "What does this have to do with women?" Children grow up, and as former Congresswoman Holtzman, now district attorney, just testified, a substantial number of the men who go on to be abusers were abused children themselves. Pornography plays a significant role in the training of our young people to become sexual abusers; trains young people to view women as objects; view women as something unworthy of respect.

In the commission report, we detailed physical acts that involved the rape, battery, murder, torture, imprisonment—as I mentioned earlier, the transmission of sexually related diseases, masochistic self-harm, prostitution and others. Psychological harms detailed in the report included suicidal thoughts and behavior, fear and anxiety caused by seeing pornography, feelings of guilt and shame, fear of exposure through publication and display of materials, amnesia, denial, repression of abuse, nightmares, compulsive reenactment of sexual abuse, inability to feel sexual pleasure outside of a context of domination and submission.

We found feelings of sexual inadequacy, inferiority, degradation, substantial frustration with the legal system. You heard these women talk this morning about how they could not get relief from overt violence where they had broken furniture and blackened eyes and visible bruises. Think about the women who call the police, once they get the courage, and say, "My husband tied me up and did to me things from the videocassette he rented from the neighborhood store," and think of the ridicule and shame those women are subjected to once they get the courage and those that will not even consider it to be a real problem.

Social harms included loss of jobs or promotions, sexual harassment at the work place, financial losses, defamation, loss of status in the community, the promotion of racial hatred, the loss of trust within the family. Obviously, the related divorces, the promiscuity, compulsive masturbation, prostitution and other sexual harassment.

I think that one of the most significant things, and I compliment you, Mr. Chairman, for beginning to, as you have over the past years, continue to remove the veil of silence from the women of America and the abuse that is taking place. I believe that a country without pornography would not be a perfect world and we would not eliminate all the problems that the witnesses have talked about and that you are concerned about, but I believe there would be a substantial reduction in the physical, psychological and social violence that occur to the women in our society.

I believe a world without pornography would be one with less rape, less sex discrimination, less domestic violence, less date-rape, and certainly one that trains our children with a different view of women.

As far as specific remedies, I think it is important that this Congress support the moves that have been labeled inappropriately as "extremist" moves to crack down against the organized crime distribution of this material. I believe members of Congress should play a leadership role in no longer protecting the pornographers. Members of Congress should speak out and clearly delineate that those materials are not protected by the Constitution, and that is the focus of law enforcement, are not acceptable in our society and it is not an acceptable way to use the bodies of our women and children.

I think it is demeaning to the Constitution of the United States to argue that this material has constitutional protection. In 1973, the Chief Justice of the U.S. Supreme Court said, "It's categorically settled this material has no such protection."

There are civil rights remedies before this Congress that would allow women and children who have been victimized by pornographers at the production end and at the consumption end who can show direct abuse—and this is not opening the floodgates to new litigation. They have all the same standards of proof that exist in any court, and if they cannot prove the nexus, their case fails. But I think it would be a significant thing to allow these women to have a remedy. (S. 703/H.R. 1213)

Current law provides no remedies for women in this area. We have many of the women who have been battered and abused, even at the production end, and there are no remedies at law. Most of these women do not escape from the abuse and have the courage to come forward until the one-year statute of limitations—which exist for most of the crimes, because if even they are criminalized, they are misdemeanors—exist.

By the time these women have had enough support from women like those who testified earlier and can break out and speak out, the time for remedies is long gone, civil or criminal.

Chairman MILLER. I am going to have to ask you to summarize, Mr. Sears.

Mr. SEARS. I am completed at this point. I just thank you, Mr. Chairman, for your concern.

[Prepared statement of Alan E. Sears follows:]

PREPARED STATEMENT OF ALAN E. SEARS, LEGAL COUNSEL, CITIZENS FOR DECENCY THROUGH LAW, INC., SCOTTSDALE, AZ

Mr. Chairman and Members of the Select Committee:

Thank you for your invitation to appear before this Committee. My remarks will be brief and to the point.

From 1981 to 1985, I was an Assistant United States Attorney and became Chief of the Criminal Section of the United States Attorneys Office for the Western District of Kentucky (Louisville). During that tenure, I successfully prosecuted on federal felony charges two of the largest distributors of obscenity in the world--the Cleveland based Sovereign News Company and General Video of America.

From March 1985 to July of 1986, I was Executive Director of the Attorney General's Commission on Pornography. As Executive Director, I was responsible for selecting and supervising the staff, managing the six public hearings, preparation of the Final Report and oversight of all activities of the Commission.

From July 1986 to the present, I have been involved with more than 300 public appearances, interviews, and training sessions in 34 states. I have met with hundreds of prosecutors, Justice Department officials, police officers, victims, victims assistance coordinators, care providing professionals, and other concerned citizens. In these past three years, I have interviewed scores of victims, victim family members, offenders and investigators.

Each member of this Congress was provided a copy of the Final Report of the Attorney General's Commission on Pornography in July of 1986. As you and your staffs reviewed the document, I am sure you found little resemblance to what its critics had said about it before release.

During the course of eighteen months, the Commission received and reviewed copies of every published study from the social sciences, every published Law Review article on related subjects, hundreds of submitted written statements, thousands of citizen letters, listened to the testimony of more than 200 witnesses at six public hearings across the United States conducted in Washington, D.C., Chicago, Illinois, Houston, Texas, Los Angeles, California, Miami, Florida, and New York, New York. The witnesses represented every relevant profession, philosophical viewpoint and interest. The Commission and its staff interviewed, indepth, more than 100 persons who reported victimization.

This morning I want to review briefly with you the key findings of the Attorney General's Commission on Pornography as they are pertinent to the focus of this hearing.

1. Content -

The Commission found that there was a dramatic change in the content of pornography from 1968 when a previous Commission studied the subject and the world of 1985. The content has deteriorated to be extremely explicit depictions of sadomasochism, torture, racism, rape, bestiality, and many other incidents of degradation, subordination, humiliation and victimization of women. "Adult" material is now, almost exclusively, hard-core pornography. In 1968, these materials were only a minute fraction of the commonly available commercial pornography market. The Attorney General's Commission staff conducted a survey of the contents of sixteen pornographic outlets in six major cities with spot checks all across the country. The study conducted under rigid social science practices confirmed the suggestions of the witnesses that the most significant portion of the commercial pornography market today centers on degradation, subordination and violence.

2. Consumers -

In 1968, the first Commission to study this subject on a national level commissioned original research to determine who the consumers of pornography were. In Technical Volume VI of that 1970 Commission Report, the finding was that the largest category of consumers were adolescents. In examining social science research conducted in the 1970's, 1980's and reviewing the real world experiences as reported by thousands of persons, it appears that the conclusions of that earlier Commission are still valid in that the largest category of consumers of pornography in America are minors. This is in spite of laws and practices by distributors that prohibit initial sale of this material to children.

The total effect as to consumption by children is unknown, however, both the early Commission and the 1986 Commission concluded that pornography could have a serious harmful effect on the mind of a child. It was a conclusion of the Commission that pornography when exposed to young children as it is in America today, could have a substantial impact upon the way they viewed sex, marriage, women, and the conduct of men in our society toward these important social relationships.

3. Size Of The Problem -

When the earlier Commission concluded its work, it found that the pornography industry only involved a couple hundred million dollars. In the 1980's, this industry has magnified to the point that reasonable estimates suggest the industry handles somewhere in the neighborhood of eight billion dollars annually. Although the majority of this cash flow is probably laundered money from narcotics, gambling, and prostitution, the actual consumer expenditures still amounts to probably a couple billion dollars, when considering all forms of pornography such as men's magazines, hard-core films, video cassettes, magazines, peep shows, cable, subscription TV, and dial-a-porn. The problem of pornography consumption and access to pornography has magnified tremendously in that pornography is now available in virtually every neighborhood through video cassette rental outlets, cable and pay television access, and "dial-a-porn" telephonic communications.

It is noted that "dial-a-porn" telephonic communications are intensely targeted toward teenages who consume millions of dollars of this material annually. I would simply ask this Committee to take a few minutes to listen to some of the recordings of the material taped by the Commission staff produced by the "dial-a-porn" distributors that target teenage boys and teach them on the telephone how to abuse their girl friend, their mother, their sister and other women in our society.

4. The Public Health -

The Commission concluded that there are many serious public health concerns that accompany the distribution of pornography that drastically affect the health of women in this country. One of the things that accompanies every so-called "adult bookstore" is the peep-show booths wherein men enter, deposit quarters to watch fragments of films, and then engage in anonymous sexual activity with persons on the other side of the booth. It was found that many of these men engage in relations with as many as three or four other persons a night. It was further found that contrary to popular belief, this is not limited to one segment of the sexual preference of our society but indeed includes many heterosexual males, includes many married men who after having anonymous sexual activity and exposing themselves at great risk to sexually transmitted diseases including Acquired Immunity Deficiency Syndrome (AIDS), then return to their homes and further transmit these exposed diseases to their innocent family and girl friends. A significant number of women reported that they were unaware that their spouse or boyfriend frequented such establishments and engaged in such sexual practices until after they had contracted diseases that had no explained source and then were subject to admission by the male as to the source of contact. Attached hereto is the Statement of Commission member Park Elliott Dietz, M.D., M.A., PH.D. (AGCP: Vol. I, pp. 37-53; Rutledge Hill, pp. 487-92) regarding seven significant public health concerns relating to pornography in our society. You will note that each of these concerns is of particular concern to the health and safety of women. (Note: the Final Report of the A.G.'s Commission on Pornography (of 1986), is referenced in the official version as "Vol. I, pp. ___", and in the privately printed version as "Rutledge Hill, pp. ___".)

5. Constitution and Legal Issues -

The material which is commonly called "hard-core" pornography, obscene material and child pornography, has never had protection under the First Amendment of the Constitution of the United States. In explaining how to define the lines of demarcation, the United States Supreme Court in 1973 stated that it "categorically settled" that such material was not protected speech. Obscene material and child pornographic material are akin to many other types of speech that are not protected under the Constitution such as libel and slander, statements in furtherance of conspiracies, statements in writing relating to mail, consumer, or wire fraud.

It was further found by the Commission that when constitutionally sound laws are enacted by legislatures with adequate penalties, and are effectively enforced by police and prosecutors, that such laws work. Entire communities in the United States, including major and medium size metropolitan areas, have rid themselves of all pornographic outlets and all commercial sales of illegal obscene material. Cities that have been successful in this area include Fulton County (Atlanta), Georgia, Cincinnati, Ohio, Newport, Kentucky, Arlington County, Virginia, (right across the river from where we sit today), Buffalo and Westchester, New York, Ft. Wayne, Indiana, the entire

State of Utah, New Orleans, Louisiana, Oklahoma City, Oklahoma, and Ft. Lauderdale, Florida. Miami, Florida has gone from twenty three hard-core outlets to eight in the last few years with enforcement, and Charlotte, North Carolina, and Norfolk, Virginia, are virtually free of hard-core material at this time.

It was noted, however, that on the federal level at the time of the Commission's work that the United States Department of Justice had done little to go after the major distributors of this material on an interstate level in the past fifteen years, with the notable, and successful, exception of the MIPORN cases of the Miami Strike Force.

6. Organized Crime -

It was the Commission's conclusion that there is virtually no distribution of obscene, illegal material on a significant multi-million dollar, interstate level that is not controlled directly or indirectly by members, associates, or other affiliates of organized crime. The related victimization of women and the crimes relating to pornography and other organized crime use of pornographic profits are almost numberless. Such harms to our society and to the women of our society include harms relating to prostitution, damage to families and women include gambling, murder, acts of physical violence, extortion, public corruption, and many other crimes, as well as the obvious strain on the family by increased divorces and sexual diseases.

7. Social Science Evidence -

The Commission was very cautious in its review of social science findings in that the Commission concluded that social science could not provide "definitive" proof on the areas in question. The Commission divided the literature and the analysis of pornography, into five categories. The first category was child pornography, and the Commission had no difficulty in establishing that this material was harmful. The second area the Commission examined was material defined as "sexually violent material." This material involves the sexualization of violence. The Commission found, based upon the literature, that such material had an impact on our society in many significant ways, including acceptance of rape myths, degradation of the class and status of women, that it lead to the modelling effect (which suggest that once a viewer sees items or activities depicted, that the individual tends to act out some of the imagery), and other effects on family and society. The Commission had no trouble in finding that negative effects were found to have been demonstrated and quoted at length from the work of numerous researchers. The third category the Commission dealt with was sexual activity without violence but with degradation, submission, domination, or humiliation. The Commission made the same findings based upon social science research as previously stated for violent material. The Commission found substantially less harm for material that contained sexual activity without violence, degradation, submission, domination, or humiliation or mere nudity without force, coercion, sexual activity, or degradation. A recent study of non-violent materials finds that the Commission might fairly be criticized for understating the evidence of harm previous found by social scientists. Dr. James

Weaver of the University of Kentucky sets out his original research and analyses the work of other researchers in an unpublished report entitled, "EFFECTS OF PORTRAYALS OF FEMALE SEXUALITY AND VIOLENCE AGAINST WOMEN ON PERCEPTIONS OF WOMEN" submitted in July, 1987, to Indiana University. Dr. Weaver's conclusion and summary, set out at pages 85-91 of his full report, is attached hereto and made a part of this testimony, with the consent of Dr. Weaver. I ask that this summary be printed in the record as part of my testimony, since this information is not in print for access to the public.

8. Production And Distribution -

The Commission found that the industry's abuse of the performers was systematic and incredible. Women without any concern for their health and safety were subjected to multiple acts of prostitution with multiple partners in very short periods of time. No precautions are taken by the "industry" to protect the health of women in any significant fashion. Attached hereto is an article written on behalf of the Commission relating to the use of performers in commercial pornography. (AGCP: Vol. I, 837-900; Rutledge Hill, pp. 224-45.)

9. Forms Of Victimization -

As I stated earlier, the Commission received hundreds of accounts of victimization. Subsequent to the Commission's work, I have received several hundred additional accounts both in written form, interview form, and from personal investigative experience. I have talked to countless police officers, social services workers, family counselors, ministers, priests, and many other professionals relating to abuses relating to pornography. The Commission in its Report appended brief extracts of some of the accounts received by the Commission, which is attached hereto. (AGCP: Vol. I, pp. 767-835; Rutledge Hill, pp. 197-223.) Harms found by the Commission were divided into three categories: physical harms, psychological harms, and social harms. Enumerated harms included under the physical category of rape, both the force against women in the industry and of persons who were subjected to the use of pornography in numerous ways. Det. Michael Krzeninski with the Sexual Assault Unit of the Milwaukee City Police Department reported to me just last week: "In the early 1980's, sexual assaults encountered in Milwaukee were "soft-core" type of assaults. There wasn't a lot of abuse of the victim. Now, rape victims are suffering more and more degradation and abuse by men who are imitating what they saw in hard-core pornography." Krzeninski told me how victims identified publications that were

produced at the time of the rape, phrases were used that were consistent with what was then commercially available in the local Milwaukee pornographic outlets, and other evidence of modelling effect. Many victims of rape have given similar accounts to me personally. Another form of rape is that of the spousal rape where a person married to the victim acted out acts involved in pornography. There were many other physical harms that would not necessarily meet the legal definition for spousal rape that involve physical violence against one married to the offender as a result of pornography. Other physical harms included forced sexual performance and sadism reported by scores of women. I believe this is one of the most significant occurrences in relation to pornography. Other physical acts included battery, torture, murder, imprisonment, transmission of sexually related diseases, masochistic self-harm, prostitution, and others. Psychological harms included suicidal thoughts and behavior, fear and anxiety caused by seeing pornography, feelings of guilt and shame, fear of exposure through publication or display of pornographic materials, amnesia and denial and repression of abuse, nightmares, compulsive reenactment of sexual abuse and inability to feel sexual pleasure outside of a context of dominance and submission, inability to experience sexual pleasure and feelings of sexual inadequacy, feelings of inferiority and degradation, feelings of frustration with the legal system, abuse of alcohol and other drugs. Social harms included loss of job or promotion and sexual harassment, financial losses, defamation, and loss of status in the community, promotion of racial hatred, loss of trust within a family, divorce, promiscuity, compulsive masturbation, prostitution, and sexual harassment in the workplace. Rather than spending a great deal of time speaking about individual examples of these, the words of the women speak for themselves. I think one of the most significant things that the Commission did was to remove the veil of silence from the women of America. We now know that thousands upon thousands of women have been battered and abused as a direct consequence of pornography.

It is my belief and the belief of the Attorney General's Commission on Pornography that pornography alone is not the sole cause of sexual assault upon women in this country or many of the other acts of physical, psychological, or social violence that occur to women. However, it is known that the effects of pornography are significant. It is the belief of the Commission and myself that a world without pornography would be a better world, a world with less rape, less sex discrimination, less violence, less rape, etc.

Respectfully submitted,

ALAN E. SEARS
Legal Counsel
Citizens for Decency through Law, Inc.

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EFFECTS OF PORTRAYALS OF FEMALE SEXUALITY AND VIOLENCE AGAINST WOMEN ON PERCEPTIONS OF WOMEN

James B. Weaver, III

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Dissertation Committee:

Dr. Dolf Zillmann, Chairman

Richard C. Pugh

Dr. Richard C. Pugh

Dr. Steven J. Sherman

Dr. Jacob J. Wakshlag

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Indiana University
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Chapter Four

Discussion

The findings show that brief exposure to explicitly sexual and violent media portrayals is capable of inducing substantial shifts in (a) general perceptual dispositions toward women and men and (b) attitudes toward punishment of a convicted rapist. More importantly, the data highlight the fact that exposure to sexually explicit and sexually violent media depictions can yield strikingly different perceptual and dispositional consequences. In general, the evidence suggests that sexually explicit themes most strongly influence perceptions associated with sexuality (e.g., permissiveness), whereas predominantly violent themes impact more general perceptions.

Specifically, the data show that exposure to nonviolent sexually explicit materials can adversely influence perceptions of the "sexual receptivity" of women without affecting other personality assessments. This effect was most pronounced for judgments of women who manifest characteristics typically associated with the subjects' peer group (e.g., age, attractiveness, etc.) and characteristics associated with sexual restrictiveness (e.g., sexually conservative and inexperienced). Independent of subject gender, exposure to the two experimental conditions involving nonviolent sexually explicit materials had essentially no influence on perceptions of the excessiveness or pleasantness of these women. However, the exposure treatments did produce shifts in perceptions of the permissiveness and assertiveness of the sexually nonpermissive female peers. And, as expected, significant gender differences were evident.

Compared with men who viewed the neutral materials, those exposed to either the consensual or female-instigated exposure condition attributed significantly greater permissiveness to the nonpermissive female peers. Those in the female-instigated condition also viewed the peer females as less assertive. This pattern of perceptual responses is quite consistent with evidence from several investigations (e.g., Zillmann, & Bryant, 1982, 1984, in press) and with the notion that exposure to sexually explicit themes results in a general "loss-of-respect" for female sexual autonomy and self-determinism. Apparently, watching portrayals of intimate heterosexual behaviors made concepts associated with female sexual promiscuity and permissiveness particularly accessible for the male subjects. Then, in a separate context, these concepts adversely affected subsequent judgments of the peer-group females. In a recent essay, Diamond (1985) asked: "Does the male viewer reinterpret even positive images of women through oppressive conventions by, for example, assuming that any naked women is available?" (p. 57). These findings suggest that this may be the case.

The perceptual responses of female subjects occasioned by exposure to the nonviolent sexually explicit themes were quite different. Specifically, the data show that female subjects exposed to the consensual sex materials attributed the lowest levels of permissiveness and assertiveness to the nonpermissive female peers. One explanation of these findings, suggested by Wyer, Bodenhausen, and Gorman (1985), is that they reflect a tendency for women to react defensively to public exhibitions of female sexual objectification. Because of traditional sex role socialization, it is argued, women recognize the adverse perceptual and behavioral consequences that sexually explicit media can produce (Griffitt, 1973) and, in response, attribute more positive characteristics to their peers. However, the fact that female subjects responded with some indifference to the more objectifying, female-instigated exposure materials requires further examination.

One speculation is that the female subjects, unlike their male counterparts, perceived distinct differences in the content of the consensual and female-instigated condition materials. For example, they may have regarded the significance of the depictions of women eagerly seeking sexual endeavors presented in the female-instigated materials as unrealistic--or at least inapplicable to perceptions of themselves or their peers--and, consequently, responded with indifference. On the other hand, the consensual materials could have been seen as more self-relevant and sexually exciting. If, as is often noted, "romantic love" is a critical component governing female sexual responsiveness (e.g., Carroll, Volk, & Hyde, 1985; Steinem, 1980), then exposure to the seemingly erotic, mutually pleasurable sexual themes depicted in the consensual sex condition could have led the female subjects to view sexuality more positively (Wishnoff, 1978). Under such circumstances, the attribution to peer-group females of lower levels of permissiveness and assertiveness could be an expression of the female subjects' own sexual interests. Unfortunately, the validation of these speculations is beyond the scope of this investigation.

Consistent with the notion of hedonic contrasting (Baron, 1979), the data reveal a general tendency for subjects to perceive others in a negative manner following exposure to explicitly violent or otherwise unpleasant media depictions. For both male and female subjects, watching either the male-coerced sex (i.e., acquaintance rape) or eroticized-violence (i.e., "slasher" film) materials produced subsequent perceptions of the nonpermissive female peers as less pleasant and innocent. However, this negative perceptual biasing did not readily generalize to perceptions associated with sexual permissiveness or submissiveness. Among male subjects, for example, the negative distorting effect projected by the target appropriateness perspective as resulting from exposure to either of the sexually violent conditions was not evident. In fact, male subjects who viewed the eroticized-violence materials reported enhanced perceptions of the assertiveness of the nonpermissive female peers.

Interestingly, a different pattern of effects was evident for female subjects. Like their male counterparts, women who viewed the eroticized-violence materials reported perceptions of the sexual permissiveness and submissiveness of the nonpermissive female peers that appeared unaffected by the exposure treatment. As expected, however, female subjects exposed to the rather realistic acquaintance rape depictions (i.e., male-coerced sex condition) judged these women to be significantly more permissive and assertive. This pattern of results is similar to those recently reported by Krafka (1985) and provides further evidence of media activated perceptual distancing consistent with the "just world" hypothesis (Lerner, Miller, & Holmes, 1976). According to this notion, people are motivated to view the world as a controllable place where bad things happen only to bad people. Consequently, when observing the misfortunes of another, individuals are thought to blame the other's actions or character for bringing on the event. For female subjects, as has been suggested by others (Wyer, Bodenhausen, & Gorman, 1985), the male-coerced sex condition materials could have made accessible constructs associated with the derogation of the female victims that remained to adversely influence subsequent perceptions of the nonpermissive female peers.

The analyses of the generalized distance scores provided additional information about the impact of the exposure treatments on judgments of others. Significant perceptual profile shifts were evident for the nonpermissive female peers. Specifically, compared with the neutral exposure condition, all four experimental conditions shifted perceptions of these women toward those of the sexually promiscuous (PROM) exemplars. A similar, but weaker, shift toward the sexually-submissive (SEXSUB) exemplar was also evident. Interestingly, an equally strong shift toward the counter-promiscuous (CPROM) exemplars was evident for male subjects' perceptions of the nonpermissive nonpeer females. Perceived sexual permissiveness was a distinguishing characteristic of all three of these exemplars suggesting that the sexual content of the exposure materials activated constructs within this dimension. Exposure to the male-coerced and eroticized-violence conditions also shifted perceptions of the nonpermissive female peers toward those of the extremely assertive counter-submissive (CSUB) exemplars. This effect was particularly strong for male subjects who viewed the eroticized-violence materials. A similar shift was also evident for perceptions of the nonpermissive nonpeer females. Additionally, such exposure shifted perceptions of permissive nonpeer females toward those of the counter-promiscuous exemplars. These findings suggest that constructs associated with female assertiveness, rather than female submissiveness, were made more accessible by exposure to the sexually violent materials. Additionally, exposure to portrayals of women taking the initiative in sexual encounters (female-instigated condition) shifted perceptions of the males toward that of the counter-promiscuous male exemplar.

Finally, the findings reveal that exposure to depictions of women eagerly and indiscriminately seeking and participating in sexual endeavors influenced punitive judgments against a convicted rapist most strongly. Subjects exposed to the female-instigated materials, compared to those in the other conditions, recommended significantly shorter periods of incarceration. This effect was equal for both men and women. Additionally, subjects who viewed the male coerced sex and eroticized violence conditions, compared to those in the neutral condition, also recommended less punishment for rape. Exposure to the consensual sex exposure materials did not significantly impact punitive judgments, however. More importantly, the results of a regression analysis illustrate that, although exposure to both sexually explicit and violent portrayals may produce similar judgments of the rapist, these assessments are best predicted by consumption of the female-instigated materials and perceptions of both men and women as permissive and excessive. Counter to the projections of the target appropriateness perspective, the perceived submissiveness of women did not influence these judgments appreciably. It must be recognized, however, that the rather small amount of variance explained by the model highlights the complexity associated with dependent measures that involve the confounding of sexual *and* violent behavior.

Taken together, these data indicate that the dispositional and perceptual consequences of viewing sexually explicit media depictions are much more extensive than proposed by some (cf. Donnerstein & Linz, 1986, December; Linz, 1985; Steinem, 1980). Clearly, these findings are inconsistent with the assertion that no ill effects result from exposure to depictions of noncoercive, "erotic" sexual activities (Donnerstein, 1984b). Furthermore, these findings show that exposure to media depictions which, by design, are intended to arouse, frighten, and disgust can activate cognitions that enhance the perception of the negative characteristics of others. The data also suggest, however, that the ability of such media depictions to activate cognitions associated with the degradation or subjugation of women is far less pronounced than earlier theorized (Donnerstein & Linz, 1986, December; Linz, 1985). It could be argued, of course, that the type of materials used and the duration of the exposure treatment in this study were insufficient to permit the "aggressive cue value" of the nonpermissive female peers to be conditioned or modeled and, consequently, did not provide a fair test of the target appropriateness considerations. Such a claim, however, does not appear justified. Compared with the stimuli utilized by Donnerstein and Berkowitz (1981), for example, the exposure treatments of this study were over twice as long and, in the case of the male-coerced sex and eroticized-violence conditions, involved at least as much violence. The sexual content of the stimuli did differ, however. Specifically, the materials used in this investigation appear to have involved substantially less sexual content than the "aggressive-pornography" employed by Donnerstein and Berkowitz to operationalize a "rape-myth" depiction. Despite the claim that "it is the violence, whether or not accompanied by sex, that has the most damaging effect" (Donnerstein & Linz, 1986, December, p. 59), the findings of the present investigation clearly indicate that the consequences of exposure to sexually explicit materials that are devoid of violent content are in need of further consideration.

In sum, the findings of this investigation strongly suggest that the theoretical formulation that views the adverse impact of media messages on perceptions of women as resulting from the modeling of violent behaviors is not as applicable as some have assumed (i.e., Donnerstein & Linz, 1986, December). Indeed, the projections of the target appropriateness perspective appear much too restrictive to explain the complex pattern of effects of this investigation. Instead, the data lend considerable support to a perspective based on social cognition considerations. This perspective recognizes that exposure to both sexually explicit and/or violent materials can activate cognitive constructs that mediate subsequent perceptions, dispositions, and behaviors. Specifically, this investigation revealed considerable perceptual and dispositional effects that remained up to one-half hour after the brief exposure treatment. The persistence of these effects over time and their resistance to competing stimuli remains to be determined, however.

Based on the findings of this investigation, two lines of inquiry for future research appear of particular interest. Future research might examine whether the adverse perceptual consequences occasioned by exposure to sexually explicit materials generalizes to produce behavioral effects in intergender social interactions. For example, the fact that men often misperceive the otherwise friendly behaviors of women as seductive has been established (Abbey, 1982; Goodchilds & Zellman, 1984). Does prior exposure to sexually explicit materials exaggerate this tendency and, if so, with what effects? Additionally, future research should explore the impact of prior exposure to sexually explicit and violent materials on perceptions of female victims of nonviolent misfortunes. Many critics have suggested that the most damaging effects of such materials are evident in the ill treatment of women, simply because of their gender, in everyday circumstances (e.g., sexual harassment, employment discrimination, and economic exploitation). Do cognitive constructs associated with female permissiveness, once made accessible by exposure to sexually explicit materials, generalize to influence perceptions outside the direct realm of human sexuality? Given the seemingly ubiquitous nature of both sexually explicit and violent materials in our society, additional research examining the impact of exposure to such depictions appears clearly justified.

Chairman MILLER. Thank you. Thank you very much for your testimony and your contribution this morning.

Ms. Hart.

STATEMENT OF BARBARA J. HART, ESQ., STAFF COUNSEL, PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE, READING, PA

Ms. HART. Thank you, good morning, Chairman Miller. Thank you for the opportunity, and I thank the staff for all the work you have done, and thank you for convening this hearing.

I am going to read my testimony, otherwise, I fear that I will be too verbose. It is my habit.

There is a mounting crisis in this country resulting from the failure of the law and our system of justice to safeguard women from the life-endangering and terrorizing assaults of men. I will specifically address the failure of the law to protect women who are abused by their husbands, partners or other familial intimates.

Many civil and criminal statutes designed to protect the victims of domestic violence and to deter batterers from future violence have been adopted over the course of the last 11 years. Although they have provided relief and protection to millions of women and children, it cannot be said that these laws have achieved the promise of protection and deterrence for which they were promulgated.

Let me first direct your attention to civil restraining or protection-order legislation, tailored specifically, again, to stop domestic violence and to protect victims. These statutes were adopted in most states in the nation. In some jurisdictions, and for some women, they have been extremely helpful, but for too many women, these laws have been useless.

The failure of protection-order statutes can be attributed both to drafting and enforcement problems. I, as one of those drafters, must confess that I facilitated the too-narrow drafting about which I am not going to speak, hoping that others who have done so will take whatever action is necessary to broaden the language of statutes in order to provide the protection that is necessary for battered women and children.

First of all, most protection-order statutes too narrowly define the class of abused persons eligible for relief. For example, some require that the victim must be married to be included in the class of protectable people. Others require current cohabitation. Old women and men who are abused in the home by caretakers are often ineligible if not related to the abuser. Teens abused by boyfriends cannot call upon these laws for relief, nor can their parents who would seek to protect them. Women battered by their minor children are not within the class of victims covered.

Thus, statutes exclude many victims, primarily women, who are acutely vulnerable to the violence and terrorism at the hands of intimates.

The second problem that I would direct the committee to address is the definition of abuse. Most restraining protection order statutes define abuse as the attempted infliction of bodily injury or serious bodily injury. They follow the criminal law. They do not afford relief to victims who are held prisoners in their home, who are sexually coerced by partners, whose property is destroyed or stolen by husbands, or cannot eat or sleep adequately because of disruption of these activities by abusers.

I would like to address briefly the psychological abuse which I have not heard addressed, except by the women this morning.

If a woman and her children live in constant terror; if they are controlled, humiliated, ridiculed, exploited, coerced and intimidated; there is no legal relief available to them under the civil statutes. They must live in this terror or seek to escape.

The very personhood and integrity of women who are psychologically abused is at risk, and the laws of this land do not serve to protect them.

A third problem with statutory drafting of civil protection orders is related to the duration of protection orders. Some last as much as one year. In one State, they last only 15 days. I cannot comprehend what a battered woman can do in 15 days to so fundamentally change the world as to be safe.

But even those women who need protection a year later, protection that extends beyond the statutory limit, cannot get it unless there is a recurrent act of abuse. Therefore, they must either choose to relocate or endure this incredible, life-endangering violence.

The relief available in many restraining statutes is also too narrow. It does not include eviction of the abuser or temporary orders of custody, two remedies that have proved to be invaluable in prevention of further abuse.

No statutory language satisfactorily addresses the issue of victim restitution, victim restoration. Women are not able to obtain funds for property damage, relocation costs, loss of income and other expenses incurred as a result of abuse.

Statutes are silent about weapons used by batterers. They do not include provisions that would authorize courts to preclude the use possession of weapons by abusers during protection orders, despite the fact that as many as 50 percent of all battered women are assaulted at one time with a gun, a knife or another weapon.

The deficits in the statutory language can squarely be attributed to the firmly entrenched attitudes and values that blame women for the violence inflicted upon them, that tolerate men's tyranny towards women and that are reluctant to hold batterers accountable for the harm they inflict.

I would like to turn then to implementation and enforcement of civil protection orders. As troublesome and as inadequate as statutory language has proven to be, the letter of the law of civil protection orders is significantly better than its implementation and enforcement. All of the legal system actors charged with the responsibility of making the civil statutes work to protect battered women have been remiss. They have resisted their charge of protection. They apply criteria extraneous to the law in determining which battered women will, in fact, receive assistance.

Women viewed as "worthy" receive greater assistance. Women deemed worthy are most likely to be white, middle- or upper-class, above reproach, helpless appearing, quiet-spoken women who do not physically defend themselves against assault. This categorization or these categories represent the cultural ideal of the "good woman." Women who do not fall in that category are not viewed as entitled to system protection.

Women who are angry, women of color, women on welfare, women who appear physically strong, women with any known criminal record, women who are drug addicts, even women who know and articulately assert their legal rights are often denied the protections that the law affords.

Judges have increasingly, and without legal authority, entered what is called "mutual restraining orders," absent any evidence—I mean any evidence—that the battered woman has acted in any way that can be defined as abuse under civil statutes.

Judges routinely believe that it takes two to tango. Judges who have extreme bias against women are entering restraining orders. A mutual restraining order may be worse for battered women than no order at all because she routinely finds herself arrested when the police come in response to her calls.

The road to justice is long for battered women. It has many roadblocks. A battered woman may be able to move beyond a significant number of these barriers, but having moved beyond the first does not make the second more achievable, and moving heroically through nine of the 10 hurdles can still leave her dead at the threshold of the last.

I would like then to turn to criminal statutes. Again, I will look at drafting and implementation problems. Because of the constraint of time, I will only address two drafting problems. I think there are many, but I want to look at the fact that criminal statutes do not address the restoration and protection of victims.

First of all, there is little protection for battered women who are complaining witnesses. Bail statutes do not attend to the special safety needs of battered women who are the chief witnesses for the prosecution in misdemeanor or felony cases against husbands and boyfriends. Battered women are often expected to live with the defendant without protection for the duration of criminal proceedings and they are assumed to be safe in doing so, despite the fact that charges were brought based on the defendant's unsafe conduct.

Victim intimidation statutes of relatively recent vintage offer some measure of protection, however these were designed for and best serve victims of stranger crimes.

Parole statutes do not uniformly require the correctional system or the district attorney to notify victims of parole hearings, to permit them to participate in parole hearings or to advise them of release dates. Battered women are substantially placed at risk when these kinds of protections are not offered.

Turning to the implementation of criminal statutes, as I see it, the principal functions of the criminal justice system have been to deter crime, to protect the citizenry from the criminals and the injuries they inflict, to punish, restrain or rehabilitate the offender, and to restore the victim in the community to the status they were in prior to the criminal assaults.

Over the course of the last 15 years, battered women, activists and policymakers in the criminal justice system have been attempting to persuade the public and others in the justice system that violence against women is a crime; not a nuisance, but intentional criminal conduct, and therefore, that domestic violence should be dealt with seriously.

While there is evidence that the public has recognized the criminal nature of domestic violence, there is still widespread resistance to this conclusion within the criminal justice system. I will not detail, although I have in my testimony, that resistance.

I know that my time is almost up. I have two more points, I guess, that I would like to make. I think that the reform efforts made in the criminal justice system, unfortunately, have focused on fixing the abuser. We have begun to see that fixing the abuser is a panacea, rather than focusing on the protection and restoration interests and needs of battered women.

I would urge this committee to very carefully avoid those kinds of recommendations that are primarily focused on fixing abusers at the expense of battered women and children.

As to other recommendations—I have five—I think that you need to adopt statutes in light of the testimony that I have given. I think that beyond that, no legislation is self-effecting and that protocols and procedures need to be embraced by every component of the legal system so that they easily and expeditiously and surely and consistently respond to battered women.

Protocols in training are absent in almost every local justice system in the country. Beyond that, I think there needs to be monitoring. I think that monitoring of these justice system components needs to be external. I do not trust that they will self-monitor in a way that will protect battered women and children. I think that this external monitoring needs to be acquired where it is resisted. I think it will probably work better where it is voluntary, but I think that monitoring is critical.

I also think that services are essential. When protections—when legal protections are not available, the need for services, be it advocacy shelter, whatever, increases incredibly, and therefore, I call on Congress and state governments to begin both to assure that protections are available through the law and to provide services when they are not.

Finally, I think that we need, as a nation, to engage in concerted consciousness raising about violence against women. I do not think that all the law in the world is going to change the status of women. It is not going to protect women and children. It is not going to restore us to health and welfare unless we profoundly change our belief in the second-status nature of women in this culture.

Thank you.

[Prepared statement of Barbara J. Hart follows:]

PREPARED STATEMENT OF BARBARA J. HART, ESQUIRE, STAFF COUNSEL, PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE, READING, PA

GOOD MORNING GENTLEMEN AND WOMEN. MY NAME IS BARBARA HART, AND I AM STAFF COUNSEL FOR THE PENNSYLVANIA COALITION AGAINST DOMESTIC VIOLENCE. I THANK CHAIRMAN MILLER FOR THE INVITATION TO SPEAK WITH YOU TODAY. I COMMEND YOU, THE COMMITTEE AND STAFF, FOR CONVENING THIS HEARING.

THERE IS A MOUNTING CRISIS IN THIS COUNTRY RESULTING FROM THE FAILURE OF THE LAW AND OUR SYSTEM OF JUSTICE TO SAFEGUARD WOMEN FROM THE LIFE-ENDANGERING AND TERRORIZING ASSAULTS OF MEN. I WOULD SPECIFICALLY ADDRESS THE FAILURE OF THE LAW TO PROTECT WOMEN WHO ARE ABUSED BY THEIR HUSBANDS, PARTNERS. OR OTHER FAMILIAL INTIMATES.

MANY CIVIL AND CRIMINAL STATUTES. DESIGNED TO PROTECT THE VICTIMS OF DOMESTIC VIOLENCE AND TO DETER BATTERERS FROM FUTURE VIOLENCE, HAVE BEEN ADOPTED OVER THE COURSE OF THE LAST ELEVEN YEARS. ALTHOUGH THEY HAVE PROVIDED RELIEF AND PROTECTION TO MILLIONS OF WOMEN AND CHILDREN, IT CANNOT BE SAID THAT THESE LAWS HAVE ACHIEVED THE PROMISE OF PROTECTION AND DETERRENCE FOR WHICH THEY WERE PROMULGATED.

CIVIL PROTECTION ORDERS.

LET ME FIRST DIRECT YOUR ATTENTION TO CIVIL RESTRAINING OR PROTECTION ORDER LEGISLATION, TAILORED SPECIFICALLY TO STOP DOMESTIC VIOLENCE AND TO PROTECT VICTIMS. THESE STATUTES HAVE BEEN ADOPTED IN MOST STATES IN THE NATION. IN SOME JURISDICTIONS AND FOR SOME WOMEN, THEY HAVE BEEN EXTREMELY HELPFUL, BUT FOR TOO MANY WOMEN THESE LAWS HAVE BEEN USELESS. THE FAILURE OF PROTECTION ORDER STATUTES CAN BE ATTRIBUTED BOTH TO DRAFTING AND ENFORCEMENT PROBLEMS.

DRAFTING PROBLEMS.

1. **DEFINITION OF CLASS OF VICTIMS.** MOST PROTECTION ORDER STATUTES TOO NARROWLY DEFINE THE CLASS OF ABUSED PERSONS ELIGIBLE FOR RELIEF. FOR EXAMPLE, SOME REQUIRE THAT A VICTIM MUST BE MARRIED TO BE INCLUDED IN THE CLASS OF PROTECTABLE PEOPLE. OTHERS REQUIRE CURRENT CO-HABITATION. OLD WOMEN AND MEN WHO ARE ABUSED IN THE HOME BY CARETAKERS ARE OFTEN INELIGIBLE IF NOT RELATED TO THE ABUSER. TEENS ABUSED BY BOYFRIENDS CANNOT CALL UPON THESE LAWS FOR RELIEF, NOR CAN THEIR PARENTS WHO WOULD SEEK PROTECTION ON THEIR BEHALF. WOMEN BATTERED BY THEIR MINOR CHILDREN ARE NOT WITHIN THE CLASS OF VICTIMS COVERED. THUS, STATUTES EXCLUDE MANY VICTIMS, PRIMARILY WOMEN, WHO ARE ACUTELY VULNERABLE TO VIOLENCE AND TERRORISM AT THE HANDS OF INTIMATES.
2. **DEFINITION OF ABUSE.** MOST RESTRAINING OR PROTECTION ORDER STATUTES DEFINE ABUSE AS THE ATTEMPT OR INFLICTION OF BODILY INJURY OR SERIOUS BODILY INJURY. THEY DO NOT AFFORD RELIEF

TO VICTIMS WHO ARE HELD PRISONERS IN THEIR HOME. WHO ARE SEXUALLY COERCED BY PARTNERS, WHOSE PROPERTY IS DESTROYED OR STOLEN BY HUSBANDS, OR WHO CANNOT EAT OR SLEEP ADEQUATELY BECAUSE OF DISRUPTION OF THESE ACTIVITIES BY ABUSERS. THIS IS BUT A BRIEF LIST OF CONDUCT THAT IS ABUSIVE BUT NOT ACTIONABLE UNDER MANY STATE LAWS.

3. **DURATION OF ORDERS.** STATUTES LIMIT THE DURATION OF PROTECTION ORDERS TO NO MORE THAN ONE YEAR IN MANY JURISDICTIONS AND FOR AS LITTLE AS FIFTEEN DAYS IN ONE STATE. ALTHOUGH THERE IS OFTEN A NEED FOR PROTECTION WELL BEYOND THE STATUTORY PERIOD, LAWS DO NOT PROVIDE FOR AN EXTENSION OF RELIEF. ADDITIONAL ACTS OF ABUSE MUST OCCUR AND A NEW PETITION MUST BE FILED BEFORE THE BATTERER CAN BE RESTRAINED. THIS LEAVES MANY WOMEN WITH NO CHOICE BUT TO TRY TO RELOCATE TO BE FREE OF ABUSE.

4. **RELIEF AVAILABLE.** THE RELIEF SET FORTH IN MANY RESTRAINING STATUTES IS TOO NARROW. SOMETIMES IT DOES NOT INCLUDE AN EVICTION OF THE ABUSER OR TEMPORARY ORDERS OF CUSTODY. TWO REMEDIES THAT HAVE PROVED TO BE INVALUABLE IN PREVENTION OF FURTHER ABUSE. NO STATUTORY LANGUAGE SATISFACTORILY ADDRESSES THE ISSUE OF VICTIM RESTITUTION FOR PROPERTY DAMAGE, RELOCATION COSTS, LOSS OF INCOME AND OTHER EXPENSES INCURRED AS A RESULT OF ABUSE. STATUTES ARE SILENT ABOUT WEAPONS USED BY BATTERERS. THEY DO NOT INCLUDE PROVISIONS WHICH WOULD AUTHORIZE COURTS TO PRECLUDE THE USE AND

> POSSESSION OF WEAPONS BY ABUSERS, ALTHOUGH STUDIES SHOW THAT AS MANY AS FIFTY PER CENT OF BATTERED WOMEN ARE ASSAULTED AT ONE TIME WITH A GUN, KNIFE OR OTHER WEAPON.

THE DEFICITS IN THE STATUTORY LANGUAGE CAN SQUARELY BE ATTRIBUTED TO FIRMLY ENTRENCHED ATTITUDES AND VALUES THAT BLAME WOMEN FOR THE VIOLENCE INFLICTED UPON THEM, THAT TOLERATE MEN'S TYRANNY TOWARD WOMEN INTIMATES, AND THAT ARE RELUCTANT TO HOLD BATTERERS ACCOUNTABLE FOR THE HARM THAT THEY INFLICT.

IMPLEMENTATION AND ENFORCEMENT OF PROTECTION ORDERS.

AS TROUBLESOME AND INADEQUATE AS STATUTORY LANGUAGE HAS PROVEN TO BE, THE LETTER OF THE LAW OF CIVIL PROTECTION ORDERS IS SIGNIFICANTLY BETTER THAN ITS IMPLEMENTATION AND ENFORCEMENT.

ALL OF THE LEGAL SYSTEM ACTORS (ATTORNEYS, POLICE, BAIL COMMISSIONERS, ARRAIGNMENT MAGISTRATES, DISTRICT ATTORNEYS, AND JUDGES) ARE CHARGED WITH THE RESPONSIBILITY OF MAKING THE CIVIL STATUTES WORK TO PROTECT BATTERED WOMEN. YET, MANY RESIST THIS CHARGE. THEY APPLY CRITERIA EXTRANEOUS TO THE LAW IN DETERMINING WHICH BATTERED WOMEN WILL RECEIVE ASSISTANCE. WOMEN VIEWED AS "WORTHY" RECEIVE GREATER ASSISTANCE. WOMEN DEEMED "WORTHY" ARE MOST LIKELY TO BE WHITE, MIDDLE OR UPPER CLASS, ABOVE REPROACH, HELPLESS-APPEARING, QUIET-SPOKEN WOMEN WHO DO NOT PHYSICALLY DEFEND THEMSELVES AGAINST ASSAULT. THIS IS THE CULTURAL IDEAL OF THE "GOOD WOMAN." "WORTHY" BATTERED WOMEN ARE VIEWED AS BEING ENTITLED TO SYSTEM PROTECTION. THEY ARE THE MOST LIKELY TO GET IT. ANGRY WOMEN, WOMEN OF COLOR, WOMEN ON WELFARE, WOMEN WHO APPEAR PHYSICALLY STRONG, WOMEN WITH ANY KNOWN CRIMINAL RECORD, WOMEN WHO ARE DRUG ADDICTS, EVEN WOMEN WHO KNOW AND ARTICULATELY ASSERT THEIR LEGAL RIGHTS, ARE OFTEN DENIED THE PROTECTION THAT THE LAW AFFORDS. THIS MAY MEAN THAT ORDERS ARE REFUSED OR THAT ORDERS ARE SKELETAL; OR THAT THEY ARE NOT REGISTERED WITH THE POLICE FOR THE PURPOSE OF ENFORCEMENT; OR THAT POLICE DISPATCH OFFICERS FOR ENFORCEMENT OF THESE ORDERS AS LOW PRIORITY CALLS; OR THAT NO ARRESTS OF BATTERERS IS MADE DESPITE VIOLATIONS OF PROTECTION ORDERS OCCURRING IN THE OFFICER'S PRESENCE; OR THAT BATTERED WOMEN ARE CHARGED WITH FILING FALSE POLICE REPORTS IF THEY REFUSE TO INITIATE PRIVATE CRIMINAL COMPLAINTS; OR THAT JUDGES PRESIDING OVER CONTEMPT AND MISDEMEANOR VIOLATION HEARINGS LECTURE THE BATTERED WOMEN ABOUT BEING A BETTER WIFE AND INSTEAD OF INCARCERATING THE BATTERER, OR FINING HIM, OR ORDERING RESTITUTION, OR RESTRAINING HIS ACCESS TO HER AND THE CHILDREN, ADVISE HIM TO STAY OUT OF THE BARS, TO TAKE HIS WIFE OUT TO A MOVIE ONCE IN A WHILE, AND TO STOP THIS FOOLISHNESS.

JUDGES HAVE INCREASINGLY AND WITHOUT LEGAL AUTHORITY ENTERED "MUTUAL" RESTRAINING ORDERS. ABSENT ANY EVIDENCE THAT A BATTERED WOMAN HAS ACTED TO "ABUSE" THE BATTERER IN ACCORD WITH THE LANGUAGE OF THE STATUTE, JUDGES WHO CLEARLY BELIEVE THAT IT TAKES TWO TO TANGO ISSUE ORDERS PROTECTING THE BATTERER FROM THE BATTERED WOMAN. A WOMAN WITH A MUTUAL RESTRAINING ORDER WHO CALLS THE POLICE ROUTINELY FINDS HERSELF ARRESTED FOR CONTEMPT OF THE PROTECTION ORDER. THUS, A MUTUAL RESTRAINING ORDER MAY BE WORSE THAN NO ORDER AT ALL.

THE ROAD TO JUSTICE IS LONG FOR BATTERED WOMEN. IT HAS MANY ROAD

BLOCKS. A BATTERED WOMAN MAY BE ABLE TO MOVE BEYOND A SIGNIFICANT NUMBER OF THESE BARRIERS, BUT HAVING MOVED BEYOND THE FIRST DOES NOT MAKE THE SECOND MORE ACHIEVABLE, AND MOVING HEROICALLY THROUGH NINE OF THE TEN HURDLES, CAN STILL LEAVE HER DEAD AT THE THRESHHOLD OF THE LAST.

ALTERNATIVES TO THE LEGAL PROCESS.

WE ARE ALSO BEING TOLD BY PROFESSIONALS IN THE MEDIATION FIELDS THAT INSTEAD OF CIVIL PROTECTION ORDERS, BATTERED WOMEN SHOULD ATTEMPT TO STOP THE VIOLENCE THROUGH MEDIATION. THE AMFRICAN BAR ASSOCIATION HAS SET UP A NUMBER OF MODEL PROJECTS WHICH DIVERT BATTERED WOMEN FROM LEGAL PROCESS AND OFFER THE SUBSTITUTE OF CONCILIATED AGREEMENTS. THESE AGREEMENTS ARE NOT ENFORCEABLE THROUGH THE COURTS EXCEPT AS CONTRACTS AND DO NOT PERMIT POLICE OFFICERS TO ARREST ASSAILANTS UPON A PROBABLE CAUSE DETERMINATION THAT A VIOLATION HAS OCCURRED.

ALTHOUGH RESEARCH DATA[*] AND HISTORY[**] DEMONSTRATE THAT MEDIATION AND CONCILIATION DO NOT END BATTERING AND DO NOT PROTECT VICTIMS AS WELL AS ORDERS THROUGH LEGAL PROCESS, POLICY-MAKERS AND COURT ADMINISTRATORS ARE BEING ENCOURAGED BY MEDIATION PROFESSIONALS TO "MODERNIZE" AND ECONOMIZE BY EMBRACING THIS DANGEROUS AND INEFFECTIVE ALTERNATIVES TO LEGAL PROTECTIONS FOR BATTERED WOMEN.

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[*] ELLIS, DESMOND, AND WIGHT-PEASLEY, LORETTA, "WIFE ABUSE AMONG SEPARATED WOMEN: THE IMPACT OF LAWYERING STYLES." CHICAGO: PAPER PRESENTED AT THE INTERNATIONAL SOCIETY FOR THE STUDY OF AGRESSION, 1986.

[**] HART, BARBARA, "MEDIATION FOR BATTERED WOMEN: SAME SONG, SECOND VERSE, A LITTLE BIT LOUDER, A LITTLE BIT WORSE." NEW YORK: NATIONAL CENTER ON WOMEN AND FAMILY LAW, 1984.

CRIMINAL STATUTES.

DRAFTING PROBLEMS.

THERE IS NOT TIME TODAY TO FULLY ENUMERATE THE SERIOUS PROBLEMS POSED FOR BATTERED WOMEN AS A CONSEQUENCE OF THE INADEQUACIES OF STATE AND FEDERAL PENAL CODES. HOWEVER, THERE ARE TWO STATUTORY PROBLEMS WHICH I WILL ADDRESS TODAY.

1. THERE IS LITTLE PROTECTION FOR BATTERED WOMEN WHO ARE COMPLAINING WITNESSES. BAIL STATUTES DO NOT ATTEND TO THE SPECIAL SAFETY NEEDS OF BATTERED WOMEN WHO ARE THE CHIEF WITNESSES FOR THE PROSECUTION IN MISDEMEANOR OR FELONY CASES AGAINST HUSBANDS AND BOYFRIENDS.* BATTERED WOMEN ARE OFTEN EXPECTED TO LIVE WITH THE DEFENDANT WITHOUT PROTECTION FOR THE DURATION OF CRIMINAL PROCEEDINGS. AND THEY ARE ASSUMED TO BE SAFE IN DOING SO DESPITE THE FACT THAT CHARGES WERE BROUGHT BASED ON THE DEFENDANT'S UNSAFE CONDUCT.

VICTIM INTIMIDATION STATUTES (A RELATIVELY RECENT VINTAGE) OFFER SOME MEASURE OF PROTECTION. HOWEVER, THESE LAWS NARROWLY LIMIT THE SCOPE OF RELIEF TO THAT WHICH BEST SERVES VICTIMS OF STRANGER CRIMES. VICTIM INTIMIDATION STATUTES DO NOT IMPOSE A DUTY ON LAW ENFORCEMENT AGENCIES TO AFFIRMATIVELY PROTECT VICTIMS; FOR EXAMPLE BY MONITORING OF DEFENDANTS' CONDUCT OR BY FACILITATING INCREASED SECURITY AT THE WORK SITES OF VICTIMS. IF VICTIMS ARE TO SAFELY PARTICIPATE IN CRIMINAL PROSECUTION, THESE PROTECTIONS MUST BE IN PLACE.

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* GOOLKASIAN, GAIL, A., "CONFRONTING DOMESTIC VIOLENCE: THE ROLE OF CRIMINAL COURT JUDGES," NIJ, **RESEARCH IN BRIEF**, NOVEMBER, 1986.

2. PAROLE STATUTES DO NOT UNIFORMLY REQUIRE THE CORRECTIONAL SYSTEM OR THE DISTRICT ATTORNEY TO NOTIFY VICTIMS OF PAROLE HEARINGS ON RELEASE STATES. NEITHER DO THEY REQUIRE THAT PAROLE PLANS INCORPORATE VICTIM PROTECTION, WHERE APPROPRIATE. WE POSIT THAT VICTIM PROTECTION SHOULD ALWAYS BE INCLUDED IN PAROLE CONDITIONS WHERE THERE HAS BEEN A HISTORY OF DOMESTIC VIOLENCE, WHETHER OR NOT DOMESTIC ASSAULT PRECIPITATED THE INCARCERATION.

IMPLEMENTATION OF CRIMINAL STATUTES.

THE PRINCIPAL FUNCTIONS OF THE CRIMINAL JUSTICE SYSTEM HAVE BEEN TO DETER CRIME, TO PROTECT THE CITIZENRY FROM CRIMINALS AND THE INJURIES THEY INFLICT, TO PUNISH, RESTRAIN AND/OR REHABILITATE THE OFFENDER AND TO RESTORE THE VICTIM AND THE COMMUNITY TO THE STATUS THEY WERE IN PRIOR TO CRIMINAL VIOLATIONS.

OVER THE COURSE OF THE LAST FIFTEEN YEARS, BATTERED WOMEN, ACTIVISTS AND POLICY-MAKERS IN THE CRIMINAL JUSTICE SYSTEM HAVE BEEN ATTEMPTING TO PERSUADE THE PUBLIC AND OTHERS IN THE JUSTICE SYSTEM THAT VIOLENCE AGAINST WOMEN IS A CRIME -- NOT A NUISANCE, BUT INTENTIONAL CRIMINAL CONDUCT -- AND THEREFORE, THAT DOMESTIC VIOLENCE SHOULD BE DEALT WITH SERIOUSLY. WHILE THERE IS EVIDENCE THAT THE PUBLIC HAS RECOGNIZED THE CRIMINAL NATURE OF DOMESTIC VIOLENCE,* THERE IS STILL WIDESPREAD RESISTANCE TO THIS CONCLUSION WITHIN THE CRIMINAL JUSTICE SYSTEM.

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* "NEW JERSEY PUBLIC OPINION SURVEY REGARDING DOMESTIC VIOLENCE," PREPARED BY IRVING CRESPI & ASSOCIATES FOR THE N.J. DEPARTMENT OF COMMUNITY AFFAIRS, JANUARY, 1987.

POLICE OFFICERS ALMOST UNIFORMLY CHOOSE NOT TO PROSECUTE BATTERERS FOR CRIMES THE OFFICERS HAVE NOT WITNESSED. RATHER THAN SEEKING AN ARREST WARRANT UPON CONCLUDING THAT THERE IS PROBABLE CAUSE TO BELIEVE THAT A MISDEMEANOR OR FELONY HAS BEEN INFLICTED ON A BATTERED WOMAN OUTSIDE OF THEIR PRESENCE, THEY TELL HER TO SEEK COUNSELING FOR THE ABUSE OR TO INITIATE A PRIVATE CRIMINAL COMPLAINT (A PROCESS THAT MAY BE COSTLY, TIME CONSUMING AND WHICH DOES NOT OFFER ANY REAL IMMEDIATE PROTECTION). IN MANY JURISDICTIONS POLICE WILL ONLY SEEK PROSECUTION FOR CRIMES COMMITTED OUT OF THEIR PRESENCE WHEN THE INJURIES TO THE VICTIM ARE SIGNIFICANT. THE "7 STITCH RULE", FOR EXAMPLE, IS AN INFORMAL GUIDELINE THAT ONLY ENCOURAGES POLICE PROSECUTION WHERE THE VICTIM NEEDS 7 STITCHES OR MORE.

POLICE EXERCISE THEIR DISCRETION BROADLY IN "MANDATORY ARREST" STATES TO ARREST BATTERED WOMEN ON THE SLIMMEST OF EVIDENCE WHILE REQUIRING STRONG CIRCUMSTANTIAL EVIDENCE PLUS THE BATTERED WOMAN'S STATEMENT BEFORE ARRESTING AN ABUSER.

BAIL COMMISSIONERS STILL LARGELY RELEASE DEFENDANTS ON RECOGNIZANCE BAIL IN DOMESTIC ASSAULT CASES. THEY IMPOSE NO SPECIAL CONDITIONS ON BAIL TO PROTECT VICTIMS EVEN THOUGH CASE AND STATUTORY LAW OFTEN PERMIT.

FOR FAR TOO MANY PROSECUTORS, THESE CASES ARE LOW PRIORITY AND THEREFORE DO NOT MERIT ANYTHING BUT THE MOST CURSORY PRE-TRIAL PREPARATION. THEY ARE PRESUMED TO BE APPROPRIATE FOR DIVERSION OR PLEA BARGAINING. ALTHOUGH THESE PROSECUTORIAL CONCLUSIONS MAY BE REBUTTABLE, FEW VICTIMS HAVE THE POWER TO EFFECTIVELY INFLUENCE PROSECUTORIAL DECISION-MAKING IN DOMESTIC VIOLENCE CASES.

THE JUDICIARY HAS BEEN PARTICULARLY RESISTANT TO EDUCATION ABOUT WOMAN ABUSE AND OFTEN HARBORS VICTIM-BLAMING BIAS. JUDGES EXERT STRONG PRESSURES ON PROSECUTION AND DEFENSE COUNSEL TO DISPOSE OF DOMESTIC VIOLENCE CASES BEFORE TRIAL. THEY PERMIT BATTERED WOMEN TO BE RE-VICTIMIZED BY THE TRIAL PROCESS; TOO OFTEN ACTIVELY PARTICIPATING IN THIS VICTIMIZATION.

PROBATION AND PAROLE OFFICERS FORMULATING SENTENCING RECOMMENDATIONS DO NOT IMPOSE CONDITIONS THAT WILL SAFEGUARD BATTERED WOMEN AND CHILDREN. THEY FREQUENTLY DO NOT ENFORCE CONDITIONS OF BAIL ABSENT FURTHER CRIMINAL CHARGES. WHEN PAROLE REVOCATION PROCEEDINGS ARE INITIATED, NOTICE IS SELDOM ACCORDED THE BATTERED WOMAN TO ENABLE HER TO MAKE SAFETY PLANS IN LIGHT THEREOF.

IN FACT, THE THRUST OF MUCH OF THE REFORM EFFORT IN THE JUSTICE SYSTEM HAS FOCUSED ON "FIXING THE ABUSER" -- VIEWING THESE CRIMINALS SYMPATHETICALLY AND ANTICIPATING THEIR SPEEDY REHABILITATION THROUGH A MINIMUM OF CRIMINAL JUSTICE INTERVENTION. IT IS PATENTLY LUDICROUS TO VIEW BATTERERS AS PEOPLE LESS ENTRENCHED IN PATTERNS OF HEINOUS, SELF-SERVING AND VICTIM-ENDANGERING CRIMINAL CONDUCT THAN DRUG RUNNERS AND PROMOTERS, BANK ROBBERS, ARSONISTS AND DRUNK DRIVERS. THIS FOCUS ON "FIXING BATTERERS" HAS OFTEN PRODUCED JUSTICE SYSTEM PROCEDURES THAT EQUATE THE INTEREST OF VICTIMS AND SOCIETY WITH THOSE OF THE BATTERER -- THAT EMPHASIZE BATTERER REHABILITATION AND MINIMIZE VICTIM SAFETY AND RESTITUTION.

CRIME VICTIMS' COMPENSATION LAWS.

MOST OF THE STATES HAVE ADOPTED CRIME VICTIM COMPENSATION STATUTES. MORE THAN HALF PRECLUDE COMPENSATION TO VICTIMS OF CRIMES PERPETRATED BY FAMILY MEMBERS. EVEN IN THOSE STATES WHERE FAMILY

EXCLUSION CLAUSES HAVE BEEN ELIMINATED, COMPENSATION TO DOMESTIC VIOLENCE VICTIMS RARELY IS AWARDED. WHEN AWARDED, BATTERED WOMEN ARE ALMOST NEVER ADEQUATELY COMPENSATED FOR THEIR LOSSES, AND THE PROCESS MAY TAKE UP TO A YEAR FROM CLAIM TO AWARD.

CONCLUSION.

THESE STATUTES AND PRACTICES REFLECT AN INDIFFERENCE TO THE PROTECTIONS NEEDED BY BATTERED WOMEN. BATTERED WOMEN ARE ENTITLED MORALLY AND LEGALLY TO THE PROTECTION OF OUR JUSTICE SYSTEM. THE RIGHTS AND INTEGRITY OF BATTERED WOMEN MUST BE RESPECTED IN THE PROTECTION PROCESS. INADEQUATE RESOURCES TRULY LIMIT BATTERED WOMEN'S OPTIONS. THEREFORE, ADEQUATE PROTECTION IS EVEN MORE IMPORTANT. WE ARE NOW SEEING THE BACKLASH AGAINST THE GAINS WON BY BATTERED WOMEN IN THE LEGAL REFORM PROCESS. THEREFORE, EFFORTS MUST BE REDOUBLED TO BRING ALL OF THE POWER OF THE JUSTICE SYSTEM TO BEAR IN SUPPORT OF BATTERED WOMEN. CONGRESS SHOULD WORK WITH BATTERED WOMEN, ACTIVISTS AND POLICY-MAKERS TO INSURE SAFETY FOR BATTERED WOMEN AND CHILDREN.

THANK YOU FOR YOUR ATTENTION AND CONSIDERATION.

Chairman Miller. Thank you very much.

This certainly makes you rethink your law school education about assault and battery and the notion that if you suffered from it, you had an immediate remedy at law because, clearly, for millions of women and children, that is not the case here.

Let me see if I know where to begin. You obviously seem to be running your office differently from most district attorneys—and I do not mean that in a disparaging fashion; it is just a statement of fact. And there are a number of jurisdictions—the one I happen to represent—that are making an effort to provide separate units; to provide specialized training; to provide both some toughness with respect to the perpetrators of violence and some sensitivity to the victims of that violence. But that is still unique.

Ms. Holtzman. Yes, and part——

Chairman Miller. It is unique in your State. It is unique in my State.

Ms. Holtzman. Why is it unique? First of all, not every district attorney's office has undertaken to engage in training, to handle these cases sensitively, to understand that it is not the victim's fault, to remove the sexist attitudes that exist. But, you know, even if you ran the most perfect, sensitive, compassionate district attorney's office, you are part of a system that may be insensitive and callous. Unless you begin to change that system, you can only go so far, which is why we fought to get the law changed on marital rape.

In fact, the sad thing in New York State in that litigation was that there were only two amicus briefs that argued that the law was unconstitutional. Both parties to the suit—the prosecutor and the defendant—were perfectly happy not to have the law declared unconstitutional. We still have 36 States in which women are viewed as property when they get married. That has to change.

You have to change not only how a prosecutor's office operates, but you have also to press the court system to engage in training. You have to press the police to change their procedures. You have to work with the state legislature and with the Congress to get funding for shelters, for treatment programs, for counseling and begin to change attitudes through educational programs.

Chairman Miller. In your testimony at one point, you mentioned that 63 percent of the males aged 11 through 20 who commit a homicide kill the man who abuses their mother. Is that a national figure? Is that what you are saying?

[For updated statistics, see letter dated December 21, 1987, on page 187.]

Ms. Holtzman. I know New York and Brooklyn sometimes are thought of as the crime center of the universe, but I think the one thing about domestic violence is that it knows no State lines, it knows no class lines, it knows no religious lines, it knows no ethnic lines.

Chairman Miller. I do not know what happens, and I am not suggesting that this is all a justification for homicide, but clearly, you have to try to put yourself into the position of the young child who continues to see his mother battered, abused and beaten, and a system that does not respond. Pretty soon, it does not take long, I would suspect, for you to think about becoming a vigilante within that system.

Ms. HOLTZMAN. And those cases present special problems for prosecutors because how do you prosecute that kind of a homicide? How do you prosecute a case in which a woman has been battered for years and then claims, as a matter of self-defense, that she had to kill her husband? Or a child who has been victimized, raped, a victim of sexual abuse by a father, finally responds by killing the father?

There are many other people who have perhaps argued this with more scholarship than I, but when you go back in criminal law, you will recognize that the notion of self-defense never was one that applied to women. So then what does a prosecutor do in this circumstance?

In cases in which we believe that violence, sex abuse, rape, or battering prompted the defendant to commit homicide, we bring that evidence and appropriate legal charges to the attention of the grand jury. We are not always required to do that. Again, this is the kind of thing that prosecutors have to be educated about.

That is just another very important area that has to be looked at.

Chairman MILLER. The clue to what is happening is that for a significant number of people, the failure of the system is starting to funnel you down a road where you end up taking the law into your own hands, either as the victim or, as in this case, as the child of a victim.

When we started discussing this some years ago in the Congress, there were a lot of people talking about women who were abusive against men and trying to promote the urgency of our addressing that. I could really find no substantial evidence of that. Obviously, it does occur from time to time.

One night I spent the night in a shelter, and late that night, I was talking to the women in the shelter. I was asking them about this argument, that there was equal abuse. They decided that they saw no evidence of that.

I said that I had been trying to find some of the victims of abuse by women and there was a lot of silence. Finally a young mother spoke up and said, "Maybe you're looking in the wrong place." She said, "I think you should be looking in the morgue because that's what happens. You have to understand, if we fight back, we had better kill him because if we just simply anger him or injure him and he comes back into this house, there's going to be hell to pay."

But the reason—I mean, what is starting to evolve here this morning is we are just seeing a repeat performance, because there is no meaningful intervention except in a few jurisdictions. And what you are telling us is that even when you get your victim all prepared and taken care of and send her off to court, she may very well encounter a judge who does not think much of these kinds of cases or just simply is not aware that this is criminal behavior or does not accept that it is criminal behavior.

So what you are suggesting is that we have kind of a systemic problem in terms of the response system. I think that Mr. Sears, you know, and others—I think we see all kinds of activities that contribute to this violence and we can argue that back and forth.

We know the statistics on abused children and how they act out later in life and all that. But once the incident takes place, we simply have a failure in terms of some kind of system in this country to accept those victims readily and treat them as such.

I do not want to overdraw the case here, but after reading a number of fairly scholarly works in the last couple of months, it appears that there is essentially a nonresponse.

Ms. HOLTZMAN. I think that that is true. I think that things have, to some extent, been getting better. I think there are district attorney's offices that have made progress in terms of their own training and their own attitudes and their own programs. Obviously, in some jurisdictions, the police have changed their practices. The battered women's movement has put a lot of pressure on and helped sensitize the criminal justice system, but I think on the whole, you still have people who do not think that domestic violence, no matter how brutal it is, is serious. Even worse, many believe it is the woman's fault. It is her fault because she should have done something about it; such as getting out of the house. There are also those who think that the courts have no business being involved—battering really has no impact on society and it is none of society's business.

That has to change. I think the Congress can play a leadership role by helping to stimulate the training of judges, the training of prosecutors, the training of police, disseminating materials, and providing funding for shelters. There is a lot of work that can be done.

We also need to help victims. You talk about what happens when the victim gets to court. We would like the victim to get to court, but one of the major problems we have is that many of these women's sense of self-worth is so diminished that they will not come to court or help prosecute; they cannot see a world for themselves outside of the battering that they have endured, no matter how brutal it is. And we have seen cases in which women have been hospitalized, their jaws fractured, their bones fractured and yet they go back to the batterer.

So you need to have a tremendous amount of help at all levels of this system. Even when parts of the system are responding, the whole system is not.

I hope that this committee can do something about that. I respect and commend your leadership in this respect, Congressman Miller.

Chairman MILLER. Ms. Hart, regarding bail, what you are suggesting is that in the instance where there may be bail provided so somebody can get out of jail after engaging in this violent behavior, the condition of the bail really is that you show up in court, not that you stop the behavior.

Ms. HART. That is the practice, yes. What we are suggesting is that there should be special conditions placed on bail that particularly address the protection of victims. Eviction from the home, for example; restraining him from going to her work site; and there are certain places that women are most at risk. And those bail conditions can be imposed that will enhance her safety.

Chairman MILLER. I am not familiar enough with this system. Is this done in other instances? Courts can set down the conditions?

Ms. HART. Yes, and the Supreme Court recently ruled on——

Chairman MILLER. You can do this?

Ms. HART. Yes, and states have the opportunity to devise statutes that specifically enumerate the kinds of special conditions.

Pennsylvania has done that, by the way, in the instance of domestic violence and there is a mandatory bail condition in a domestic violence misdemeanor arrest when the magistrate concludes that the batterer is a danger to the victim. Then the magistrate must impose special conditions which exclude him from the home and exclude him from her place of work, education, whatever.

Chairman MILLER. So in some instances—obviously, we don't want people released when we believe that they are a danger to the community at large——

Ms. HART. That is correct. I am not saying——

Chairman MILLER. You are defining the community as—he has a great propensity to go back and commit violence at that particular address.

Ms. HART. That is correct.

I think that there are other things that should be looked at. The study suggested earlier in Minnesota about the effect of mandatory arrest overlooks the fact that in Minnesota, there is at least a 36-hour detention period after the arrest.

I think that there is some real, good deterrent value in that kind of detention. He has 36 hours in order to evaluate what is going to happen to him if the criminal prosecution——

Chairman MILLER. He is also more likely to have to explain it to—it is no longer a private matter at that point.

Ms. HART. That is correct.

Chairman MILLER. Thirty-six hours pretty well suggests that you are going to have to explain to somebody else why you are not at work; or if you don't explain it, your work record is different than it would have been otherwise.

Ms. HART. That is correct. There may be some real value in shock detention, just the awfulness of having to sit there and eat that food and sit behind those bars. There are many batterers who are not career criminals. That very detention may, in fact, together with the arrest, be what has deterred future violence, and that is not often recorded when that data is given.

I think it is an important thing to look at.

Chairman MILLER. Congressman Coats.

Mr. COATS. Thank you, Mr. Chairman. Mr. Sears, I would like to say thank you for the work that you have done on behalf of the pornography commission. There is a great deal of misinformation as to what the commission was doing and what they reported. Unfortunately, there is so much attention focused on that that not enough attention was focused on the parts of the report that I think received very widespread acclamation and agreement.

One of those was section 2, which I think you alluded to in your earlier testimony, describing violent pornographic material. I am wondering if you could elaborate a little bit on the research methodology you used to come to the conclusions that you did, and then I have some follow-up questions on that.

Mr. SEARS. All right, Congressman Coats, thank you.

I believe the easiest way to explain the methodology would be, perhaps, to rebut what critics said. As I mentioned earlier, we heard from over 300 individuals. We conducted 100 in-person interviews that were very in-depth interviews, where we went out and corroborated to the extent possible—as these women have testified here earlier this morning, so many of these women never get to the stage of reporting the incidents of violence so there is no official record.

In other cases, they have either a need to go to the hospital to have objects removed from their vaginal or anal orifices or to have treatment for physical battery that related to the abuse; that there were hospital records extant. In some cases, there had been some—particularly in the middle- and upper-class income areas, where there was insurance or economic means, there had been oftentimes a psychiatrist or psychologist who had become involved in a counseling role.

So, to the extent possible, we went out and corroborated all of the testimonies of these women and we found, basically, that the stories, though incredibly different, were also incredibly the same. As I think every witness who has been here earlier this morning testified, there were commonalities in the kinds of abuse.

In addition to those witnesses, we received hundreds of written letters and statements of various people. We traveled and spoke to individuals. We had live testimony. These were criticized by the pornographers and their allies as merely anecdotal experiences; however, I have not found a victim of rape or battery or abuse to consider that to be a mere anecdote, but to be a very real harm to that individual.

We found, without any real significant effort to do so, hundreds of these victims in our society.

In addition, we looked at the social science research. We did not say that social science categorically proves anything. We have pointed out the weaknesses of research, what it could show, what it could not show, and then we outlined the research.

Filed as a part of my statement is a doctoral dissertation submitted July of 1987 by Dr. James Weaver, University of Kentucky, that basically, in essence, says that the Commission on Pornography understated. It was too conservative in its statement of what the evidence showed and that there is much more evidence of harm. We looked at social science. In addition, we dealt with law enforcement officers, victims assistance coordinators, people from every walk of life. We heard from those professionals and others who had dealt with the real world.

So I think our methodology was quite thorough.

Mr. Coats. Relate specifically how you drew the conclusion, or what steps were taken to come to the conclusion that, as you said here, I think the modeling effect leads to the violent action, leads to the rape, leads to the abuse.

How do you make that transition and how scientific is your conclusion?

Mr. Sears. First of all, there are a number of social science studies that deal with this area, but I think it is important for the record to note that social science measures attitudinal and belief changes more than behavioral change. We have very limited ability in any area, such as the effect of advertising, to determine just what it is that makes the person carry out the behavior.

But the social science research that is extant is quite good and it is quite detailed. It leaves out a major sample of the universe; we leave out the young children; we leave out the regular consumer; and we certainly don't deal with the kinds of men who are involved in these practices. We basically deal with college students.

But the studies showed substantial changes in attitudes and beliefs about women. For example, the theory that every woman secretly harbors the desire to be taken; that when a girl says "no," she means "yes," and so forth.

We looked at the social science studies on who the consumers of pornography were and we found the same thing that the 1968 commission found, which is something that is not broadly advertised.

The largest category of consumers of pornography in America are 12- to 17-year-olds. They are in the real world. This is not a consenting-adult issue. This is the training material for the youth of America. This is what women are and what women want to have done to them.

If I might make just a side note and detract a second, District Attorney Holtzman just spoke about the problem we have with the teaching by the males. They see the abuse of their mothers and many of the crimes that occur—but we also have those same young boys seeing displayed in the marketplace this material, and as we had many of these young boys talk to us, testify, and many of the older men, they learned how to abuse their wife or their girlfriend through this material.

They thought this was acceptable behavior. They told us, "Hey, this is sold in the corner store. It is everywhere you go. It is at the neighborhood video place. These adult bookstores. We have politicians in our town that stand up and tell us how good this stuff is for people and should not be prosecuted."

There has been a teaching that this kind of behavior is protected and respectable behavior to use against women.

So we had those stories from the offenders. We interviewed offenders. One offender on death row gave us 70 hours of interviews, very in-depth, about how he had learned to abuse women, and ultimately ended up with a serial killing of a number of women, all sexually violent in nature.

Basically taking all of the evidence together, we came to the conclusion that there was a nexus and a link from real-life experiences and from the social sciences. Not one or the other, but a combination of the totality of the evidence.

Mr. Coats. Was that conclusion endorsed by a majority of the panel members? Obviously, it was; it was part of the report, but was that——

Mr. Sears. As to—we divided pornography into different categories. As to the sexually violent material, it was an overwhelming and unanimous decision.

Mr. Coats. There was a unanimous decision on Section 2?

Mr. Sears. Yes.

Mr. Coats. The conclusion was supported by all of the commission members?

Mr. Sears. Right.

Mr. Coats. I am wondering if either Ms. Holtzman or Ms. Hart have had the opportunity to review the commission's report and whether you agree with Section 2 to the effect that hardcore pornography has on this particular subject?

Ms. Hart. I have reviewed it and I am not prepared to comment. I read it when it first came out.

Ms. Holtzman. I have read portions of the report, but I am not prepared to comment on it.

Mr. Sears. If I could add one thing, one of our recommendations—we made 92 recommendations—and one of those is that every domestic violence group that works with these battered women include in its intake survey form certain questions relating to pornography. A number of groups have done that, Mr. Coats, and our experience is now—in one area outside of—not too far from Congresswoman Holtzman's district, from where she is district attorney—over 50 percent of the women coming into the center now are answering the questions affirmatively, that pornography was involved in the abuse and in the modeling of the type of behavior that was conducted against them.

Mr. Coats. There was some testimony that enforcement officials and agencies and so forth were really not sensitized to this problem. Has there been any evidence that the Attorney General's commission report has helped to both sensitize enforcement officials and others dealing with the problem and brought about some changes in the way that the enforcement is undertaken?

Mr. Sears. There has been significant change in a number of communities. I have been in 34 States. We have 20 cities in America in the last 18 months that have eradicated all of the illegal businesses, all of the so-called—I hate the terms "hardcore" and "softcore," Mr. Coats, because women's bodies are neither, but those are what we unfortunately are left with to talk about in the debate.

We have noted in some of the areas, they are beginning to keep statistics. Cincinnati, Ohio, was a city that cleaned up this material some years ago, and they kept crime statistics there in an unusual way, on a block-by-block basis. The neighborhoods where the material was openly sold and promoted, before and after, showed dramatic differences in both the major crimes and minor crimes against women. It is dramatic and startling to see the difference it made in those areas.

But, see, we cannot do many controlled studies because people go across the boundary to the next place it is available. But there is a heightened sensitivity.

I think the most important thing that this Congress could do, in addition to enacting some of the legislation, is to help change the attitude in America about who and what women are. It is no more acceptable to traffic in the bodies of women and pornography and to look upon them as objects to be used this way than it is to engage in many other violent and antisocial acts.

Unfortunately, many of our public officials, Mr. Congressman, have been silent in this area, or even been supportive of what I call the pornography ethic. That is the ethic that it is acceptable, somehow, for women to be used this way and we should not limit people's rights to look upon women and abuse them in this fashion.

Mr. **Coats**. Thank you.

Chairman **Miller**. Mr. Grandy.

Mr. **Grandy**. Thank you, Mr. Chairman.

I think it might be worth saying for the record that in my experience, representing a very rural constituency during a period of economic decline over the past few years, I have witnessed an increase in the instance of domestic violence, sometimes very strange domestic violence.

There was an instance in a small community that I represent where a 14-year-old girl was consistently beating up her mother. I see in the testimony that it is obviously too difficult to quantify the economic influences on this violence. But I did want to get into your remarks Ms. Holtzman, about what happens to boys who witness violence and who grow up to abuse their mates. What happens to the girls? Do they grow up to marry abusers? Do they become terribly paranoid and sheltered? Is there a trend in their behavior when they grow up?

Ms. **Holtzman**. Again, I am not sure that I have the statistics at my fingertips on this, but I do not think there is any question that girls who are brought up in a home where there is battering also may believe that this is the norm and they, in their own marriages or in their own relationships, may say, "Well, if this is happening to me; it happened to my mother; this is the way the world works and this is my fate and there is nothing that can be done about it."

So I think there is no question that this has a tremendously harmful impact on children, and not only in terms of whether they will become victims or victimizers. I am not sure that we have really studied in what other kinds of ways it affects their behavior and affects their sense of self.

Mr. **Grandy**. We have data here suggesting that one-half of the women who attempt suicide and those who actually kill themselves are battered women.

Is there any data suggesting that a woman who is married to an alcoholic will frequently remarry another person who is an alcoholic? Do you see this trend at all? Is there a kind of pattern that is set forth?

Ms. **Holtzman**. No, I do not think so. I think that to suggest that is wrong—women are not at fault; they are not victims by choice. They may not understand how they can extricate themselves from a battering situation because they have seen so much battering around them. This is why it seems to me that it is very important not only to have a criminal justice system that will work to protect battered women but also educational systems that will teach girls and women that they do not have to be in this circumstance. It is also important that our laws, including the Constitution, assert women's full dignity and humanity, as well as equality.

Mr. **Grandy**. Getting to the criminal justice aspect of that and the Minnesota plan, is this the Duluth plan that you are talking about? That was my understanding.

Ms. **Hart**. The Minneapolis police study is the one that has been referred to, but I am familiar with the Duluth project.

Mr. **Grandy**. Does that not include some mandatory incarceration for a first offender? Do they put somebody away for a minimum of 36 hours?

Ms. **Hart**. There is a detention period that is 36 hours. I understand, in Duluth, it may be as long as 48.

Mr. **Grandy**. I see.

I might have misunderstood you, Ms. Hart, did you have a problem with that? Do you think that detention perhaps is——

Ms. **Hart**. No. I suggested that it would, in fact, deter. It may, in effect, save battered women from death in that particular time period.

Mr. **Grandy**. So there is quantifiable data that proves that it actually reduces violence?

Ms. **Hart**. The Minneapolis police study coupled arrest with detention and, yes, their arrest/detention choice, in fact, deterred violence more than any of the other interventions done by police.

Mr. **Grandy**. Does it increase the reporting of violence? In other words, are women who know this law exists more inclined to report instances of spouse abuse because they know an offender will be put away for 36 to 48 hours?

Ms. **Hart**. I think that there is not evidence to suggest that that is true. In fact, some women in mandatory reporting states underreport because they know, in fact, he will be retained and they believe, and have been told over and over again by him that if they are, in fact, arrested or detained, that he will kill them upon his release.

I do not think that you have good data yet about increased reporting.

Mr. **Grandy**. How about that problem? Obviously that is a very real fear for a lot of women, to put somebody away for 36 hours, 48 hours and then, I assume, he is free.

Ms. **Hart**. I think the Duluth project tends to deal with that. During that 36 hours, an advocate goes out and visits with the battered woman at her home, talks to her about her legal options, offers her shelter, tells her that when that 36 hours is up, she will get a call to be told when he is to be released; that if she wants at that time to come into shelter, she may, in fact, get that. She is told about all her legal options and she is helped to begin those.

Meanwhile, the batterer, who is sitting in the sheriff's detention cell, gets a visit by a man who is doing intervention work to tell him about the programs that are available to him, but to absolutely underscore that he has committed a heinous crime that society will not accept and that if he continues this misbehavior, he will find himself, at least in Duluth, locked up for a substantial period.

There is intervention to both the batterer and to the battered woman during the detention period, which I think greatly helps the battered woman make decisions about her safety and about her relationship to the criminal prosecution that will follow.

Mr. **Grandy**. As far as the right to stay home is concerned, do you not really need a Minnesota kind of plan to go hand-in-hand in allowing the woman to stay home, as opposed to going to a shelter? If there is no detention for the spouse, what is to keep him from coming right back to the house and abusing her, as opposed to a shelter where she would be protected?

I agree with you in allowing the victim to stay home if she feels more comfortable, but how do you create legally that atmosphere of comfort unless the person is incarcerated at least temporarily?

Ms. HOLTZMAN. In New York, and I suspect in most jurisdictions, when someone is arrested, they are incarcerated, held in custody until they are properly booked and brought before a judge. It takes, in New York, generally 36 hours, minimum. It is not an intentional program; it is just part of the booking process.

Mr. GRANDY. Bureaucracy at work, right?

Ms. HOLTZMAN. That is it. Getting fingerprints and checking the record and so forth.

We are starting the program that was mentioned—and actually, it is a federally funded program—trying to provide to the victim information about what kinds of services are available, what her options are, to provide counseling immediately at that point, also.

Mr. GRANDY. Assuming this works, do you see, perhaps, a reduced need for shelters?

Ms. HOLTZMAN. Not yet.

Mr. GRANDY. So you still need a kind of program that would perpetuate safe harbors for abused women and their children.

Ms. HOLTZMAN. Oh, yes. It is still too soon, in terms of our program, to give you the results as to how well it is working. We have it only in one precinct, in one small area.

Mr. GRANDY. Do you have any data on the connection between alcohol abuse and domestic abuse and narcotic abuse? I mentioned a situation which is almost always related to severe economic crisis, but it is really more families turning on each other, rather than repeated offenders and recidivism. I am just curious about the instances which you cite, whether there is not a problem with substance abuse, as well as domestic abuse.

Ms. HOLTZMAN. Again, I don't have the figures for you, but there have been some studies that have been done. Let me put it to you this way, certainly in the area of abuse of elderly people, we see that that is heavily tied into drug abuse, particularly crack use.

As part of our sentencing program, we try to insist that the batterer go through a drug treatment program or alcohol program if that is relevant. Obviously, I think that that is a factor in many cases. On the extent to which it is, I don't have the figures, but I would be happy to provide them to you.

Mr. MILLER. Would the gentleman yield?

Mr. GRANDY. I would be glad to yield to the chairman.

Mr. MILLER. The committee does have some figures, because we went through this in one of the other hearings. There is a connection, I think in a number of cases, a number of studies, where alcohol is a factor within the abusive cycle. We can have the staff get that for you.

Also, in the last recession, we took a look specifically at rural communities and what was happening that may be of interest to you, and some of the problems that women in rural communities have with reporting, because either they are related to a lot of people in the community and/or there is just the notion that if you tell somebody, it is going to be—you know, your business is going to become everybody else's business.

We can get some of that information for you.

Mr. GRANDY. I thank the chairman. As it turns out, I have reviewed some of that material and there is, I think, a question of isolation and familiarity in those communities that perhaps does not exist.

Mr. COATS. Would the gentleman yield?

Mr. GRANDY. I would be glad to yield.

Mr. COATS. Reference was made earlier to the Minneapolis study. We have, or I have here, the written statement of James Stuart, who is the Director of the National Institute for Justice, and he references that study in detail. If it is all right, I would like to ask unanimous consent that it be made part of the record.

Chairman MILLER. Without objection.

Mr. GRANDY. Thank you.

I guess I just wanted to ask—obviously, there is a connection between alcohol or substance abuse and domestic abuse, violence. Should it be part of the program to treat all symptoms when a person goes in? I mean, there should be some kind of alcohol abuse therapy that is implicit in the training against violence. Is that not going without saying? Is that in the works right now?

Ms. HOLTZMAN. Let me just say that in general, the programs available to treat offenders, whether it is drug treatment programs or alcohol treatment programs or batterers programs, are very few, badly funded and wholly inadequate.

Obviously, it is important when alcohol is part of the problem that it be treated. When we find that is part of the reason for the abuse, then we will get the court to sentence the person to attend these alcohol treatment programs.

But the important thing to recognize is that alcohol alone is not the only factor here because alcohol reduces the inhibitions and allows the feelings that are there to begin with take control, namely, that it is appropriate to use force against a woman, that she becomes a sexual object. That she becomes an object, dehumanized—that, I think, is the problem.

That is why we have to get at the underlying attitudes, as well as the factors that allow those attitudes to be expressed.

Mr. GRANDY. I agree with you totally. What I was hoping for was that there was some kind of umbrella program that attacks this on all points. I assume that is what you are saying; it is existing in New York City, but——

Ms. HOLTZMAN. It does not exist in New York City. The program that I have referred to exists in my borrough because we have worked with the victims agency to get that set up. Part of the problem is that the work that has been done—and it has been very creative in various parts of the country—is dependent on what kinds of local initiatives there are and what kind of local funding there is.

That is why Congress can play such an important role in helping disseminate the information, in helping to stimulate that local initiative and helping to fund it.

Mr. GRANDY. Mr. Sears, just one final question. I was sitting here thinking when you were talking to Mr. Coats, do you have any data on rates of marital rape, domestic abuse, family abuse in countries such as Denmark or Holland, where the public display of pornography is most hard to avoid?

Mr. SEARS. Yes, sir, we have some data and I would be glad to submit in written form some numbers on that from the commission's work. Dr. John Cort and others—Dr. John Cort from Australia engaged in a number of cross-cultural surveys on some of these related problems. There was a study that was included in the earlier 1968 commission report that suggests that in certain Scandinavian countries, accompanying the legalization and availability of this type of material, that there was a consequential decrease in sexual offenses.

Those figures, as reported, were correct in the 1968 report; however, they failed to cover what we found in the later look, that accompanying the decriminalization of the pornographic material, there was also a decriminalization of many sexual offenses. For example, the one of highest single reported sexual offenses at the time of this decriminalization was what we commonly refer to in this country as "flashing." That was all completely legalized in those countries. There is no such offense now and we have noted that there is a dramatic drop in crime rate when legalization occurs.

However, when the—we went back and looked culturally, we found that that same country, Denmark, had an overall drop in crime rate for the reasons I have already stated, but we had an increased rape rate.

I am also aware of a study here in the United States that was done by two professors at two of our major universities that dealt with the correlational data between the rape rates and the availability of commonly circulated so-called men's magazines—I also despise that term for the reasons earlier stated—that showed, among the 50 States, there were only about three States out of sequence with the circulation per capita of these magazines and the rape rate. It did not distinguish the difference between marital rapes or other types of domestic rapes.

But as we stated in the commission report, I do not think you can conclude from that correlation data that that alone proves X, Y, or Z. That is one piece of evidence to look at this problem. But I would be happy to submit at a later time to the committee data on cross-cultural studies.

Mr. **Grandy**. Thank you.

Thank you, Mr. Chairman.

Chairman **Miller**. Mr. Wolf.

Mr. **Wolf**. I thank you, Mr. Chairman. I want to thank Mr. Miller and Mr. Coats for having these hearings and welcome the panel here. It is a pleasure to see you, Ms. Holtzman. You do not know who I am, but I have followed your career. I remember when you ran and had absolutely no chance of beating and then you woke up the next day and you were there. Although I do not know that we would agree on some issues, I really admire you.

I just wanted to express to Ms. Hart and Congresswoman Holtzman, to ask, if you could, go back and look at this Section 2. I do not know what is in Section 2 either, completely, and I talked to Mr. Coats and he explained, but I think, based on what you are both trying to do, you really ought to go and look at Section 2 and maybe tell the committee what your views are on the Pornography Commission because it seems to me that the two of you and Mr. Sears are really kind of bookends. He is talking about, and you are talking about, something very important.

That is, the protection and prosecution and what do you do when you have a problem. I think you have to, as the father of four daughters. If something happens, you have to have the infrastructure.

I think what Mr. Sears is talking about, and I may be wrong and I apologize for not having read either of your statements in great depth, but on page 11, he says, "We now know that thousands upon thousands of women have been battered and abused as a direct consequence of pornography."

Mr. Sears made the comment—what percentage of the shelters, Mr. Sears? What percentage did you say asked the question about pornography?

Mr. Sears. We have a very small number that we are now aware of that ask the question, but in those shelters that are asking the question, the numbers are running as high as 50 percent——

Mr. Wolf. Fifty percent.

Mr. Sears [continuing]. But this is—and I don't mean to suggest that this is the major or the only cause, but it is a significant cause.

Mr. Wolf. Okay. Fifty percent, and then you say, "It is my belief and the belief of the Attorney General's Commission on Pornography that pornography alone is not the sole cause of sexual assault upon women in this country or many of the other acts of physical, psychological, social violence that occur. However, it is known that the effects of pornography are significant. It is the belief of the commission and myself that a world without pornography would be a better world, a world with less rape, less sexual discrimination, less violence and less rape."

If you put Mr. Sears' position and your position together, it seems to me that is the way to solve the problem. What you all are doing is dealing with the problem that we have today, which has to be done, but he, I think, is talking about how to prevent it, kind of getting down at the tap root and chopping it off so that we can deal with the problems that we have, but maybe prevent them from coming.

Not that you both ought to have looked at Section 2 and know it by heart, but I would appreciate it if you would go look at Section 2 on directly what Mr. Coats asked and submit for the record what your comments are with regard to that. I think maybe part of the solution is to put Mr. Sears' points and your points together. Then we deal with the problem today, but we also go back and kind of cut it off, caring for the future generations that are coming along.

If I can for the record ask of both of you, look at Section 2 and not just say you did not read it, but go back and read it because I know—I do not know, Ms. Hart, of your record, but I know of Mrs. Holtzman's. I think that is a legitimate thing, to examine it, particularly, as Mr. Coats said—and this is a long question, but particularly if it was a unanimous view. There were some people on the Pornography Commission who condemned the overall report because they, for different civil liberties reasons—it was a relatively balanced commission, seven-three, six-four.

If they reached a unanimous conclusion, then I think it is worth each of you going back and looking at it and reporting to the committee as to what your comments are. If I could ask you to do that officially for the record.

Ms. **Hart**. I would be pleased to review and comment.

I would like to say, however, that although pornography, in my experience as a private practitioner and as staff counsel for the Pennsylvania Coalition Against Domestic Violence, is an activity that is perpetrated by many batterers and is a part of many battering episodes. I do not, at this juncture, view pornography as a primal cause. You are suggesting cause. I think that it is incident to—it is a part of abuse that many women experience.

I think that there is a more fundamental problem in this culture in that women are chattel. Women are not——

Mr. **Wolf**. But the magazines may end up bringing that about. You may be right, but I think if it is—you know, my car is totally finished and you look at it and it is a beautiful car, but without the gasoline, it will not run. The gasoline is an incidental—I mean, you do not even buy it when you buy from the car dealer, but you need it.

And if it is a portion—if it is 5 percent or 50 percent or 3 percent or 45 percent, we have really got to deal with it. I tend to agree the other problem is really the problem of self-esteem, low self-esteem probably is the root problem of almost—is part of some of the major problems that we have in this country.

One of the reasons that Mr. Hinckley did what he did; one of the reasons that Sirhan Sirhan did what he did and Oswald did what he did, but if there is another factor that joins it and forces it to combust, then we have to deal with it.

I think you have got to go back and deal with it. This commission report was well-received. The American Civil Liberties Union did not really embrace it, but overall, it was relatively well-received. There is some validity in this.

If there is, you have to, for a person who cares deeply about it, you have to look at this as an element. Now it may not be the overriding element, but it is an element, and therefore, I just request that you go back and—you know, you have not read Section 2 and I am not going to hold you to that today, but go back and read it and give us your report because you have more knowledge on this issue. You have forgotten more than a lot of us in Congress know.

You have to mend those, meld those two and give us your best thinking on it.

Ms. **Hart**. May I just make one suggestion, if I might, to the Congressman, also?

I think that batterers do not batter because of low self-esteem, and I think it is very important that Congress address that issue. Batterers batter because they are entitled to do so because they have male privileges in this culture, and therefore, to say——

Mr. **Wolf**. It is wrong. We both agree it is wrong.

Ms. **Hart**. But I think that seeing men as sick, rather than seeing men as privileged, makes a major difference in the kind of intervention that you take legally——

Mr. **Wolf**. Ms. Hart, we both agree that it is wrong, and let's try to find the reason.

Ms. **Hart**. I would be glad to review that.

Mr. **Wolf**. If what Mr. Sears says has any validity—which I personally believe that it does—I think we have to address that portion of it because we cannot solve the whole problem until we kind of look at the different parts of it.

Mr. **Sears**. Can I make a comment, Mr. Congressman?

Mr. **Wolf**. Yes.

Mr. **Sears**. Thank you.

One of the things that Ms. Lee, who testified earlier this morning, and you have her written testimony, talked about was the need for early intervention and the need to change, for example, with the young girls, as they grow up to become women, their attitude about their self-esteem and their rights as persons.

Ms. Hart just talked about the male privilege in this culture. Part of the male privilege in the culture in America today is to go out and consume vast amounts of this material that teaches that women are objects; that women like to be beaten; they like to be tied up; they like to be defecated on; they like to be urinated on; they like to be a victim of these kinds of things.

It is my belief that a young man can go through as many hours at school with sex ed programs, with training and all these other areas, and you can put that same young man with his peers in a room looking at these movies, these videocassettes, which are now the primary consumption item, and teach that man more in one evening about what he is to think about women and how he is to react to women than all the studies and all the courses in the school can teach.

Basically, we have a young man who becomes sexually aroused. He then begins to associate that arousal with the images of women in that role.

I know we had women who were beaten before there was pornography and we will have women beaten the day we eliminate all pornography, but I believe it is a significant training tool in our modern culture and when we have public officials who stand up and say this is not a problem; it should be lawful; it should be protected by the First Amendment, I think we are teaching men a whole acceptability of this kind of behavior.

Some of the offenders—and many of the child abusers—I have been involved in many search warrants where we have gone into the homes—you may be aware that on Monday, the Attorney General announced the search of 276 child pornography cases, over 100 indictments. One of the things we find in most of these people's homes are vast amounts of pornographic material and much of the material consists of legitimatization of their habit.

One of the reasons they collect the material—and we know from the studies of these offenders and the lengthy interviews—is that they have to justify—they know what they do is wrong, but they want to have justification. It is a crutch.

I agree with Ms. Hart, there are many, many other reasons, and I do not even say this is the root cause, but I believe it is a significant cause and it is one that we have overlooked for so long.

I do not know any more powerful training tool to a young man than to accompany these images with his own sexual arousal, to teach him that women are to be battered and to like it and to take it or else.

Mr. **Wolf**. Congresswoman Holtzman, I just wonder if you could do the same thing, just look at it.

Ms. **Holtzman**. I think it would be useful to look at. I find pornography personally distasteful and I am sure it has a harmful effect in terms of molding attitudes, but I do think that there are some immediate things that could deal with the problem of those people whose lives have already been affected.

For example, Washington, D.C.'s statutes do not make it clear that marital rape is a crime. This Congress has done a lot of legislating for Washington, D.C., and maybe one of the signals you could give about the misuse of women's bodies is to do something about that, for example.

We also have a situation in which men whose attitudes have already been shaped are out there battering women. These women have nowhere to go. We do not have enough shelters. We have children who are being abused. There are not enough counseling programs for them.

So give us some help in terms with dealing with the problem now, as well as looking at other ways in which we can address some of the contributing factors that give rise to it.

Mr. **Wolf**. I think you make a lot of good points.

If I can ask for the record that both Congresswoman Holtzman and Ms. Hart, if you will furnish your comments on Section 2.

Just a last question, Mr. Sears, is there a—I heard that there is a point that a person who is looking at pornography, that that does not do it, and then there is an escalation and desensitizing. Would you comment as to what the commission found out with regard to that escalation, or did you find——

Mr. **Sears**. First of all, I want to report—I think it is important for the committee to know that there is only a minority in the psychiatric and psychological community that has looked at this area as a problem. Those that have looked at it have begun to—primarily from the case of victim offense—one of our psychologists who testified, for example, was one who worked with incest survivors. For 10 years, she never knew about pornography. She began to ask the question and, very much like the domestic violence report we had, over half of her incest survivors had had pornography used to lower their inhibitions.

But what I want the committee to know, then, what I am saying is there is a limited number of people who know about this field. Those who have worked in this area, one of those being Dr. Victor Cline at the University of Utah, had developed certain theories that they believe there is a progressive nature; one becomes desensitized and is not aroused anymore with what we would call mere nudity or merely a woman's body on display, and then they move to the next stage. Ultimately, we get to a stage where the person is unsatisfied, even with the most violent and most sadomasochistic images, and contrary to the cathartic theory, the theory that this will release tension—people will masturbate and forget it—the experience in real life is that many, many people cross the threshold and want to act out the activity.

We have husbands who come home, after being in these so-called "adult" outlets, having had sex with men in the place, and have sex with their wives, transmit diseases, but also force their wives to carry out those acts. Dr. Cline has dealt in his career with hundreds of families, women and men, who have been involved in this. He has dealt both with the offender and with the victim of that offense.

It is his conclusion that there is a dramatic escalation effect and a dramatic incidence toward acting out or modeling that behavior.

Mr. **Wolf**. Mr. Chairman, I want to thank the panel and I will read all your testimony.

Thank you very much.

Chairman **Miller**. Mr. Wortley.

Mr. **Wortley**. Thank you, Mr. Chairman.

It is a frightening society that we live in. I have a very uneasy feeling about the direction that we have been going in and that direction that we seem to be headed in in terms of violence.

It seems to me that, at least what we read in the media, would indicate that there are an awful lot of repeat offenders out there. I do not know whether it is just a matter of the media reports, but repeatedly you find these stories of violence that exist in the daily newspapers, magazines, as well as seeing it on television.

I have constituents of mine who regularly will send me mail saying, "Why doesn't the Post Office shut this stuff up?" Well, the outside of the envelope does say "sexually explicit solicitation" or something. Many of those people are not reading that themselves, but maybe they have younger, less-mature people in the family who get a hold of this material.

You talk to the Post Office and they say, "The envelope is properly labeled and there is really nothing we can do about it. You don't have to open it up," and so on and so forth. Well, my God, they know it is a dead box number someplace. There is a mischief-maker, there is a bad guy out there who is turning out sexually explicit material. Maybe it is photographs of children or whatever, but we do not seem to get results.

In our courtrooms, I do not know if our defense attorneys are getting better and they know how to get around the laws or whether there are more technicalities in the code that they exploit to get their client off, but I would like to know from all of you folks, do you see us moving in a stronger direction, the law enforcement system moving in the right direction, or are more and more people committing these crimes and getting away with it, either because of the legal system or maybe it is us up here or your state legislatures or your city legislatures who have not enacted legislation that closes the gap and brings us back to a civil society where we have some moral values?

Why do we not start out with you, Mr. Sears.

Mr. **Sears**. I think an important point, Congressman Wortley, is what Congressman Coats stated a moment ago. Those of us at this table do not sit here as parties advocating different solutions. I think we are in agreement that we have a problem that must be resolved.

Ms. Holtzman and Ms. Hart have talked about the need to deal with those who have already become the offender and with those victims and there is a desperate need there. I think we can take encouragement from the fact that we are having a hearing like this today and that we are able to talk about model programs such as that that Congresswoman Holtzman has instituted in her district.

There is some definite movement in the right direction. I think it was the conclusion of the commission that we are, as with most kinds of social problems, doing too little too late. In the obscenity enforcement field, I think before you came in, I outlined that there was a crackdown and we have over 20 cities now that have eradicated this kind of material from their boundaries, but, of course, the people who want it can cross to the boundaries of the next one.

We need much Federal concern and effort in this area, and we need the public officials to lead the way in saying this is just an unacceptable way.

I think there is one group that we have left out in our discussion this morning, if I might have the liberty, and that is to just mention the women who are the prostitutes on the streets of this country. Recently, in Washington, you may have seen the Washington Post article reporting that over half of the women on the streets had AIDS. They did not catch it from breathing in a room; they caught it from someone whom they were engaged in sexual relations with.

The majority of women on the street entered into that profession at about the age of 13 to 15. The majority of the women in that profession had no other financial options. The majority of women in that profession entered from one of the kinds of families that Congresswoman Holtzman and Ms. Hart and the other witnesses here talked about today, where they were either the victims of parental abuse or spouse abuse.

Most of the women involved in the pornography industry today, the kind of industry that the law can do something about, are these women. They are the products of domestic violence. They are the product of these broken, destroyed homes as a result of this.

I think that we have made some tremendous progress by talking about it, but there is a long way to go. The kinds of solutions that we have all urged this committee to consider this morning would go toward resolving the problem.

I might also mention there is a source of revenue for some of these solutions. Harping on the pornography prosecution just a moment, if I might, Mr. Miller, Mr. Chairman, one of the proposals of the commission is that every state enact a forfeiture law where we would seize the assets from these folks and when we prosecute them, seize their goods and put some of those funds into the kinds of programs that we are talking about here today and make the criminals pay the cost of the violence they have brought upon their victims.

In Orlando, Florida, using the Florida forfeiture law, $50,000 was seized from one store. In Arlington County, Virginia, U.S. Attorney Henry Hudson has now seized over $2 million in assets in a RICO forfeiture case against one fairly minor-league player in the pornography business; big in terms of the state, but small in terms of the nation.

The resources are out there and the criminals can be made to pay for many of the programs that we would like to have here today.

Mr. **Wortley**. District Attorney Holtzman, how many people the police arrest are actually charged with violence? I am speaking now of domestic violence. How many convictions do you come up with or does everybody go to a counseling service?

I am concerned particularly about repeat offenders?

Ms. **Holtzman**. Let me first say that until November of 1984, we could not prosecute cases of marital rape. That was not a crime in New York State. Now it is a crime and so we can prosecute these cases. So even if a woman reported it, no arrests could be made and we could not prosecute.

By the way, as I have pointed out, that situation still pertains in 36 of the States of this country, sending a very horrible message about the role of women, the status of women and their humanity and dignity.

The police now in New York City are operating under a new protocol—well, it is not new now, but it was put into effect fairly recently—requiring them automatically to make arrests in a felony.

In the past, the police had much more discretion and many times they reflected social attitudes which were that domestic violence was not serious and that it was the woman's fault. Through some of the programs that we have developed, we have been able to get orders of protection much more quickly, more judges are permitting woman to stay in the house and are ordering the batterer out. We have brought more prosecutions because we have tried to sensitize our assistant district attorneys to the handling of these cases, but we still find situations in which, for a variety of reasons, the woman will not prosecute. Sometimes they are willing to go forward, but there are not enough treatment programs that the batterers can be sentenced to; sometimes the judges themselves are not always receptive to the prosecutions in these cases.

As I pointed out earlier, we developed a training program for misdemeanor judges, but the system has refused to expand it to felony judges, just to give you an idea of the problems that are encountered.

But the whole system still has to provide the resources and the will and the legislation to permit battered women and abused children to have the recourse they are entitled to from the law.

Mr. **Wortley**. Do very many of the batterers actually go to jail or sentenced to terms or is it mostly rehabilitation? And how effective do you feel that rehabilitation really is?

Ms. **Holtzman**. We would prefer to prosecute and see jail terms in many more cases, but in many cases, the complaining witness, the victim, does not want to see that happen. The man may be the sole provider; she may feel guilty in terms of her children; she may feel a variety of things that will make her very reluctant to proceed.

This also happens, by the way, with children who are the victims of incest. They, too, are reluctant to proceed for some of the same reasons against the parent.

In those cases, we have no alternative. Thank goodness, we do have at least a court sentencing program of counseling, but we would prefer to see jail sentences, particularly in the more serious cases or in cases of repeated violence. If we can get the complaining witness to cooperate, that is what we get and we sometimes get very severe sentences, appropriate to the severity of the battery.

Mr. **Wortley**. Ms. Hart, I did not mean to leave you out. Do you have some observations? Do you think the system is improving or moving in the right direction or do you have the same concerns I do, that perhaps we have failed?

Ms. **Hart**. I think the system is improving. I think that largely it is moving in the right direction. I think that it continues to primarily fail battered women, however, and I think that despite the fact that this hearing, about legal issues, we have a much more profound problem in this culture and it is one in which we tolerate violence against women.

I do not want to leave on the note that somehow if we upgrade the legal system, we are going to end violence against women. We are not. We are only going to end violence against women once we, as a culture, absolutely state that we will not tolerate it and that we will, as individuals, not as law enforcement officers, but as mothers and sisters and fathers and brothers and friends, absolutely interfere with—bring attention to the violence and say that we will not tolerate it. We, as private citizens, have as much right to be vocal about our abhorrence of violence against women as law enforcement agencies.

I think it is something that Congress can do to facilitate that private—not legal-system—statement that we will, as a community, no longer tolerate violence against women. I think it is important that you help in that endeavor.

Thank you.

Mr. **Wortley**. Part of this is probably representative of the moral decline of society, the very permissive society that we are living in today.

I thank you, Mr. Chairman.

Chairman **Miller**. Thank you, and I want to thank the witnesses. I want to make sure that—I do not think anybody has said this, but I am concerned that we not leave the overall impression that we have a correlation here where these acts of violence are carried out by people who traffic in or consume pornography. That may very well be a contributor, but we have instances of violence against our children and against spouses and women in this society to an extent that far exceeds even that causation.

We are talking about a generic problem within this society that I do not think has anything to do with the moral decline of this society. Men have been beating women throughout history so unless there was a grand moment there when everything was perfect, it is a tragic comment on the image and the view of women.

I take a little bit of issue here. I do not think that you can change people's attitudes when, in fact, they look at a legal system that almost sanctions this by default. That worries me. I think you are right. It is for everybody to make that decision that another person has a right to be safe in their own body and not to be abused, but when you see the activity carried out and you see no resultant punishment for that behavior or sanction against that behavior, I am concerned about whether you really have the ability to change people's attitudes.

Again, there is some acquired behavior going on here by what you see transpiring. I think it was pointed out by Ms. Holtzman in terms of what happens to some of the adolescents. I am terribly concerned that when somebody in this society yells for help there is a real haphazard response here from the agencies that are supposedly in the business of protecting.

But let me thank you very much for your testimony.

We are going to go over and vote and be back in about five minutes and then we will hear from the third panel.

Thank you.

[Recess.]

Chairman MILLER. The select committee will reconvene.

The next panel will be made up of Charles Patrick Ewing, who is Associate Professor of Law and Psychology, State University of New York at Buffalo; Lenore Walker, who is the Executive Director of Domestic Violence Institute, Denver, Colorado; and Darrell Pope, former lieutenant detective, Michigan State Police, Pensacola, FL.

Mr. Ewing, we will start with you.

STATEMENT OF DR. CHARLES PATRICK EWING, ASSOCIATE PROFESSOR OF LAW AND PSYCHOLOGY, STATE UNIVERSITY OF NEW YORK, BUFFALO, NY

Dr. EWING. Mr. Chairman, each year, hundreds of thousands of American women are physically, sexually and psychologically abused by the men in their lives. We have already heard compelling testimony to that this morning.

Most of these women suffer in silence, but a small percentage, perhaps several hundred a year, strike back with deadly force. As a psychologist, an attorney and a law professor, I have recently completed and published a study of 100 cases in which battered women have killed their batterers. I would like to share with you some of what I have learned about why battered women kill, what happens to them when they do, and why I believe that many, if not most of these women are doubly victimized, first by the men who batter them and then by our criminal justice system.

First, let me address the issue of why battered women kill. The battered women whose cases I have studied and those I have examined have a great deal in common, whether or not they have killed their batterers. To begin with, they have all been subjected to brutal physical abuse. They have been punched, kicked, strangled, shot and stabbed. They have been beaten and attacked with guns, knives, razors, broken bottles, iron bars, baseball bats and automobiles. They have beaten with belts, chains, clubs, chairs, lamps, wrenches and hammers. Their injuries have ranged from cuts and bruises to lacerations, fractures, dislocations, miscarriages and internal bleeding, concussions and subdural hematomas.

Most of these battered women have also been tormented psychologically and sexually. Their batterers have terrorized them with weapons and have threatened to kill them and their children if they ever reveal the abuse or try to leave the relationship.

Most of these women have also been raped by their batterers and many have been forcibly sodomized, sexually abused with a variety of objects and forced to commit unspeakable sexual acts. Many of these women have been raped in front of their children.

Finally, most of the battered women I have studied were trapped in battering relationships, and this is a very critical point because the most frequent question asked about a battered woman, especially one who kills her batterer, is, "Why didn't she leave?"

The answer is that battered women stay with their batterers for a variety of reasons beyond their control. Many lack the financial resources needed to leave; friends and family often disbelieve them, blame them and/or encourage them to remain with their batterers. The police and the justice system often refuse to see woman-battering as a crime and deny battered women the kind of respect and assistance routinely afforded other crime victims.

Aside from battered women's shelters which, even if available, provide, at best, only a temporary refuge, most battered women and their children simply have no safe place to go.

Finally, many batterers threaten battered women and/or their children with more severe abuse, even death, if the women try to leave the relationship.

In recent years, battered women who kill their batterers have been the subject of numerous reports in the popular media. Generally, these reports convey the impression that many, if not most of these women, are acquitted on grounds of self-defense. One article in Time Magazine said: "An array of women have managed to walk away unpunished after killing their husbands or even former husbands."

Nothing could be further from the truth. The 100 cases I have studied clearly refute this media myth. Among these 100 women who killed their batterers, nine pleaded guilty to homicide charges, three pleaded not guilty by reason of insanity and three had the charges dropped against them before trial. The remaining 85 out of 100 all went to trial claiming self-defense. Sixty-three were convicted of some form of criminal homicide. Twelve were sentenced to life in prison; the others received sentences ranging from four years to 25 years in prison. Seventeen women received prison sentences potentially in excess of 10 years.

Why are so many battered women homicide defendants convicted, despite their claims of self-defense and despite generally abundant evidence of the abuse they had suffered at the hands of the men they killed? The answer to that question requires consideration of the facts in the cases and the legal doctrine of self-defense.

Consider, first, the facts. In every one of these 100 women's cases, the women had been subject to repeated, often severe physical abuse by the men they eventually killed. In 41 of the 100 cases, the batterer had threatened to kill the woman. Thirty-nine of these women had been threatened and/or assaulted with a weapon and in several of the cases, the batterer had threatened to kill the woman's children and/or her family.

As a practical matter, given the nature and the extent of the abuse these women have been subjected to, it is no wonder that most of them claim to have killed in self-defense. As a legal matter, however, it is also no wonder that in most of their cases, their claims of self-defense were rejected and they were found guilty.

The criminal law doctrine of self-defense varies somewhat among jurisdictions, but generally justifies the use of deadly force only to protect oneself from the imminent infliction of death or serious bodily injury. The "self" in self-defense law refers only to corporeal aspects of the human existence, physical life and bodily integrity.

The problem for most of the battered women in the 100 cases I studied was that they killed their batterers, not while they were being battered, when their fear of death or serious injury might well have appeared reasonable to a jury, but rather, sometime after a battering incident. Not surprisingly, about a third of these women killed their batterers while their batterers were physically attacking them. The remaining two-thirds killed their batterers sometime after they were physically battered or verbally abused, and in at least 18 cases, the killing took place while the batterer was asleep or nearly asleep.

To conclude, though, as juries seem to be doing, that most battered women who kill their batterers do not do so in what reasonably appears to be a threat of imminent death or serious bodily injury is not necessarily to conclude that these women did not act in self-defense.

On the contrary, I believe—I am convinced that many, perhaps most of these women, including those who kill outside of direct confrontations with their batterers, do kill in self-defense, although not in the unduly narrow legal sense of that term.

As I just indicated, current self-defense law equates "self" with only the physical side of existence, physical life and bodily integrity. But outside the law, "self" is commonly understood to encompass not only those physical aspects of existence, but also psychological functions, attributes, processes and dimensions of experience that give meaning and value to our physical existence.

If "self" is viewed from this broader and more commonly accepted perceptive, it seems clear to me that many, indeed, perhaps most battered women who kill their batterers, do so in self-defense. They kill to prevent their batterers from damaging, if not destroying, psychological aspects of their "self" that give meaning and value to their lives. In short, they kill in what I call "psychological self defense."

Chairman MILLER. Let me interrupt you just for a second and then you can proceed in the manner which is most comfortable. I have just been informed that we are going to have to be out of here at 1:00. Your written statement will be placed in the record and so, to the extent that you can, summarize so we can have a little bit of questioning. I am sorry to do this to you, but the Chair was not aware of this when we started.

Dr. EWING. Sure, I will push it along faster.

While these women may not be faced with the choice of killing or being killed at the moment, many are confronted with a dilemma nearly as dreadful. They are unable to escape from the battering relationship so they face the choice of killing either the batterers or themselves or being reduced to a psychological state in which their continued physical existence will have little, if any, meaning or value.

Whatever we choose to call this state, life without feeling alive, partial death or simply utter hopelessness, the net result for the battered woman is a life hardly worth living.

Should battered women or anyone else who uses deadly force to avert that result, to prevent what reasonably appears to be the threat of psychological destruction, be branded criminals and sent to prison? I do not think so, but that is precisely what is happening in this country now.

Battered women are being doubly victimized, once by the men who batter and brutalize them and again by a justice system that refuses to treat battering as a crime and then holds battered women to an unrealistic standard of accountability when they seek to protect themselves.

In a book I have recently published called "Battered Women Who Kill," I proposed that state lawmakers act to put an end to at least part of that double victimization. Specifically, I have proposed that the self-defense law be expanded to justify the use of deadly force where such force appeared reasonably necessary to prevent the infliction of extremely serious psychological injury. Under this doctrine, extremely serious psychological injury is defined as gross and enduring impairment of one's psychological functioning which significantly limits the meaning and value of one's physical existence.

The doctrine I have proposed would not, nor should it, exculpate all battered women who kill their batterers. The justification offered by this doctrine is necessarily narrow and would apply only where the defendant could prove that her lethal act was reasonably necessary to protect herself from the infliction of the most extreme kind of psychological harm.

Under my proposal, the defendant would also be required to prove that she had been battered, or at least threatened with batterer, at or some time near the time she used deadly force.

Legal recognition of this proposed doctrine of psychological self-defense would, of course, not put an end to battering. This is merely the tip of the iceberg. Nor should it exculpate all battered women who kill their batterers. The justification, as I have said, is necessarily narrow and would apply only where the defendant could prove that her lethal act was reasonably necessary to protect herself from the infliction of an extremely serious psychological harm.

Still, legal recognition of this doctrine would have significant impact, both practical and symbolic on domestic violence and that impact would apply not just to battered women who kill, but battered women more generally.

As a practical matter, recognizing this doctrine would provide jurors with a legal basis for acquitting those battered women defendants who, by virtue of their psychological plight, do not deserve to be convicted or punished, but would not be acquitted under current self-defense law. Under current law, these women can be acquitted only through jury nullification; that is, the jury's willingness to ignore the law given to them by the judge.

Under the doctrine I propose, the legal fate of these women would be determined by an honest application of the law, rather than by the unpredictable willingness of some sympathetic jurors to ignore the law.

Finally, symbolically, legal recognition of this doctrine of psychological self-defense would benefit not only those few battered women who kill their batterers, but the vast majority who do not. In recognizing this doctrine which would have its primary application in domestic violence cases specifically where battered women kill their batterers, the law would fully and unequivocally acknowledge the dreadful psychological plight of these women, as well as the cost that plight exacts from these women, their children and from society as a whole. That kind of acknowledgment, I think, would surely help call attention to the serious problem and serve to promote commendable efforts currently underway to eradicate, or at least reduce the incidence and severity of women-battering.

Thank you.

[Prepared statement of Dr. Charles Patrick Ewing follows:]

PREPARED STATEMENT OF DR. CHARLES PATRICK EWING, ASSOCIATE PROFESSOR OF LAW & PSYCHOLOGY, STATE UNIVERSITY OF NEW YORK, BUFFALO, NY

Each year, hundreds of thousands of American women are physically, sexually and psychologically abused by the men in their lives. Most of these women suffer in silence, but a small percentage -- perhaps several hundred a year -- strike back with deadly force. Having recently completed and published a study of 100 cases in which battered women killed their batterers, I would like to share some of what I have learned about why battered women kill, what happens to them when they do, and why I believe that many if not most of these women are doubly victimized, first by the men who batter them and then by our criminal justice system.

First let me address the issue of why battered women kill. The battered women whose cases I have studied and those I have examined have a great deal in common, whether or not they have killed their batterers. To begin with, these women have all been subjected to brutal physical abuse. These women have been punched, kicked, strangled, shot and stabbed. They have been attacked with guns, knives, razors, broken bottles, iron bars, baseball bats, and automobiles. They have been beaten with belts, chains, clubs, lamps, chairs, wrenches and hammers. Their injuries have included cuts, bruises, lacerations, fractures, disclocations, miscarriages, internal bleeding, concussions, and subdural hematomas.

Most of these battered women have also been tormented psychologically and sexually. Their batterers have terrorized them with weapons and have threatened to kill them and their children if they ever revealed the abuse or tried to leave the relationship. Most of these women have been raped by their batterers and many have been forcibly sodomized, sexually abused with a variety of objects, and compelled to engage in bestiality, bondage and other sadomashochistic sexual acts. Many of these women have been raped in front of their children.

Finally, most of the battered women I have studied were trapped in the battering relationship. This is a critical point because the most frequent question asked about a battered woman, especially one who kills her batterer, is: "Why didn't she leave?" The answer is that battered women stay with their batterers for a variety of reasons beyond their control.

As a result of constant and uncontrollable abuse, many battered women come to suffer what psychologists call "learned helplessness." They become passive, lose their motivation to respond, and conclude that nothing they do will alter any outcome. Eventually they cease trying to avoid the abuse and fail to recognize or take advantage of available avenues of escape.

But learned helplessness is only part of the story. Battered women are also trapped in battering relationships by other more tangible factors. Many lack the financial resources needed to leave their batterers. Family and friends often disbelieve them, blame them and/or encourage them to remain with their batterers. Often the police and the justice system refuse to see woman battering as a crime and deny battered women the kind of respect and assistance afforded other crime victims. Aside from battered women shelters, which -- if available -- provide at best only temporary refuge, most battered women and their children simply have no safe place to go. Finally, many batterers threaten battered women and/or their children with more severe abuse, even death, if the women ever even try to leave the relationship.

My research and that of others suggests that battered women who kill are often more severely abused and have fewer resources than battered women who do not kill. Battered women who kill have generally been more frequently beaten, threatened with weapons, and subjected to threats of death. They also seem to have suffered more serious physical injuries. Finally they seem to be generally somewhat older and less well educated than battered women who do not kill.

In recent years, battered women kill their batterers have been the subject of numerous reports in the popular media. Generally these reports convey the impression that many if not most of these women are acquitted on grounds of self-defense. As one article in TIME magazine put it, "an array of women have managed to walk away unpunished after killing their husbands or even former husbands."

The 100 cases I studied clearly refute this media myth. Among these 100 women who killed their batterers, nine pleaded guilty to homicide charges, three entered pleas of not guilty by reason of insanity, and three had the charges against them dropped before trial. The remaining 85 women all went to trial claiming self-defense. Sixty-three were convicted of various forms of criminal homicide. Twelve of these women were sentenced to life in prison. The others received sentences ranging from four years probation (with periodic incarceration) to 25 years in prison. Seventeen women received prison sentences potentially in excess of ten years.

Why are so many battered women homicide defendants convicted despite their claims of self-defense and generally abundant evidence of the abuse they suffered at the hands of the men they killed? To answer that question requires consideration of the facts of these cases and the legal doctrine of self-defense.

Consider first the facts. Every one of these 100 women had been subjected to repeated, often severe, physical abuse by the men they eventually killed. Eighteen had been raped, forcibly sodomized and/or otherwise sexually abused by the men they eventually killed. Three of these women also reported that their children had been sexually abused by the men they killed.

Finally, and perhaps most significantly, nearly all of these women reported having been subjected to extremely severe psychological abuse by the men they killed. Among the indignities to which these women had been subjected by their batterers were: the killing of family pets, beatings in front of their children, the keeping of a miscarried fetus in the family freezer, forced prostitution, gang rape, and the physical and sexual abuse of their children. In one case, the batterer forced the woman's face into a mound of red ants. In another, the batterer tied the woman up and forced her to watch while he dug her grave.

Many of these women had contacted the police repeatedly and had sought and obtained court orders of protection, essentially evicting the batterer. In none of these cases was the criminal justice system able to keep these men from returning and battering these women. Indeed, several of these women actually left their batterers and fled to other parts of the country. The batterers tracked them down and forced them back home at the point of gun or knife.

In 41 of these 100 cases, the batterer had threatened to kill the woman. Thirty-nine of these women had been threatened and/or assaulted with a weapon. And, in several cases, the batterer had threatened to kill the woman's children and/or family.

As a practical matter, given the nature and extent of the abuse to which these women had been subjected, it is no wonder that the vast majority of them claimed to have killed in self-defense. As a legal matter, however, it is also no wonder that in most cases their claims of self-defense were rejected and they were found guilty. The criminal law doctrine of self-defense varies somewhat among jurisdictions, but generally self-defense law justifies the use of deadly force only to protect oneself from the imminent infliction of death or serious bodily injury. The "self" in self-defense law refers only to the corporeal aspects of human existence -- physical life and bodily integrity.

The problem for most of the battered women in the 100 cases I studied was that they killed their batterers not during a battering incident, when their fear of death or serious bodily injury might well have appeared reasonable, but rather sometime after a battering incident. Not surprisingly, only about a third of these women killed their batterers while the batterers were physically attacking them. The remaining two-thirds killed their batterers after being physically battered or verbally abused. In at least 18 cases, the killing took place while the batterer was asleep or nearly asleep.

To conclude, as juries seem to be doing, that most battered women who kill their batterers do not do so in response to what reasonably appears to be a threat of imminent death or serious bodily injury is not necessarily to conclude that these women did not act in self-defense. On the contrary, I am convinced that many, perhaps most, of these women, including those who kill outside of direct confrontations with their batterers, do kill in self-defense, although not in the unduly narrow legal sense of that term.

As I indicated earlier, current self-defense law equates "self" with only physical life and bodily integrity. But outside the law, "self" is commonly understood to encompass not only those corporeal aspects of existence, but also psychological functions, attributes, processes and dimensions of experience that give meaning and value to physical existence. Despite disagreements as to its precise parameters, "self" clearly encompasses both the physical and mental being and thus includes such recognized and socially valued psychological attributes as security, autonomy, identity, consciousness, personality and spirituality, to name but several. Furthermore, it has long been understood that harm to the psychological aspects of the self can be just as detrimental as injury to the physical or bodily aspects of the self. Indeed, some theorists regard serious psychopathology as largely a product of injury or threat to the psychological components of the self.

If "self" is viewed from this broader and more commonly accepted perspective, it seems clear that many, indeed probably most, battered women who kill their batterers do so in self-defense. They kill to prevent their batterers from damaging, if not destroying, psychological aspects of the self that give meaning and value to their lives. In short, they kill in what I have chosen to call psychological self-defense.

While these women may not be faced with a choice of killing or being killed, many are confronted with a dilemma nearly as dreadful. Unable to escape from the battering relationship, they face the "choice" of killing (either their batterers or themselves) or being reduced to a psychological state in which their continued physical existence will have little if any meaning or value. Whatever one chooses to call this state -- "life without feeling alive," "partial death," or simply utter hopelessness -- the net result for the battered woman is a life hardly worth living.

Should a battered woman -- or anyone else -- who uses deadly force to prevent that result, to avert what reasonably appears to be the threat of psychological destruction, be branded a criminal and sent to prison? I think not, but that is precisely what is happening in many cases under current self-defense law. Battered women are being doubly victimized: once by the men who batter and brutalize them and again by a justice system that refuses to treat battering as a crime and then holds battered women to an unrealistic standard of accountability when they seek to protect themselves.

In my recently published book, Battered Women Who Kill: Psychological Self-Defense as Legal Justification, I have proposed that state lawmakers act to put an end to at least part of that double victimization. Specifically, I have proposed that self-defense law be expanded to justify the use of deadly force where such force appeared reasonably necessary to prevent the infliction of extremely serious psychological injury. Under this doctrine, extremely serious psychological injury would be defined as gross and enduring impairment of one's psychological functioning which significantly limits the meaning and value of one's physical existence.

The doctrine I have proposed would not, nor should it, exculpate all battered women who kill their batterers. The justification offered by the doctrine is necessarily narrow and would apply only where the defendant could prove that her lethal act was reasonably necessary to protect herself from the infliction of extremely serious psychological harm. Under my proposal, the defendant would also be required to prove that she was battered or at least threatened with battering at or sometime near the time she used deadly force.

At first glance, this proposed doctrine of psychological self-defense may seem radical. In fact, however, it is not only in keeping with the basic principles of criminal law but also has ample precedent in current law justifying the use of deadly force.

Law is a reflection of social values and society generally accords paramount value to the preservation of life (i.e., physical existence) -- generally but not always. In other legal doctrines, the law give precedence to psychological values even over preservation of physical life. Consider, for example, the defense of habitation. As a rule, deadly force may not be used justifiably to protect one's property. Yet many jurisdictions regard deadly force as legally justifiable when used to prevent unlawful entry into one's home even where there is no anticipation of death or serious injury to the occupants.

Consider also the legal doctrine of "retreat." If one is attacked by another, may he stand his ground and respond in kind (even to the extent of killing the attacker) even though he could easily avoid further confrontation by retreating (i.e., by running away)? The answer in most jurisdictions is "yes." There is no requirement that one retreat from an attack before using deadly force, even if one could do so with complete safety. The rationale for this so-called "true man" rule has a clear psychological basis. As one leading legal scholar has written, "There is a strong policy against the unnecessary taking of a human life [but] there is [also] a policy against making one act a cowardly and humiliating role."

Even in jurisdictions where retreat is required, there remains an overriding concern for what is essentially a psychological interest in security: one need never retreat when attacked in one's own home or place of business. This so-called "castle"" doctrine derives from the ancient notion that "a man's home is his castle." Similarly, there has long been a common law recognition of the right to use deadly force to resist being wrongfully dispossessed of one's dwelling place.

Given these doctrines which clearly place greater value on a defender's psychological well-being than on an attacker's physical life or bodily integrity, it seems reasonable to argue for a more general privilege of psychological self-defense. If the law is willing to justify the sacrifice of human life to prevent the humiliation of the "true man" or to protect the sanctity and security of his "castle," why should it not offer similar justification when life is sacrificed to protect other concerns even more fundamental to one's psychological self?

Legal recognition of this proposed doctrine of psychological self-defense would, of course, not put an end to battering. Nor would it, nor should it, exculpate all battered women who kill their batterers. The justification offered by the proposed doctrine is necessarily narrow and would apply only where the defendant could prove that her lethal act was reasonably necessary to protect herself from the infliction of extremely serious psychological harm. Nevertheless, legal recognition of this doctrine would have significant impact, both practical and symbolic, on domestic violence.

As a practical matter, recognition of the doctrine would provide jurors with a legal basis for acquitting those battered women homicide defendants who, by virtue of their psychological plight, do not deserve to be convicted or punished but would not be acquitted under current self-defense law. Under current law, these women may be acquitted only through jury nullification -- that is, the jury's willingness to ignore the law. Under the doctrine I have proposed, the legal fate of these women would be determined by an honest application of the law rather than the unpredictable willingness of some sympathetic jurors to ignore the law.

Symbolically, legal recognition of the proposed doctrine of psychological self-defense would benefit not only those few battered women who kill their batterers but the vast majority who do not. In recognizing this doctrine, which would have its primary application in cases where battered women kill their batterers, the law would fully and unequivocally acknowledge the dreadful psychological plight of battered women as well as the cost that plight exacts from these women and from society as a whole. That kind of acknowledgement would surely help call attention to this serious problem and serve to promote efforts currently underway to eradicate or at least reduce the incidence and severity of woman battering.

Chairman MILLER. Thank you.

Ms. Walker.

STATEMENT OF LENORE E. WALKER, ED.D., A.B.P.P., PRESIDENT AND PSYCHOLOGIST, WALKER AND ASSOCIATES, DENVER, CO

Ms. WALKER. Hello, Mr. Chairman. I want to start by saying "Thank you," not only for calling these hearings today, but for your long, sustained interest in this area. I have had the privilege of testifying before you before and it is rare and wonderful, on behalf of all the battered women and battered children, that you have sustained this kind of interest in this terrible problem.

I want to echo some of what Dr. Ewing has testified. When I last was before this committee, I believe I had been a recipient of some Federal monies to do research in the area of battered women. My prepared testimony today is not on the particular issues that research covered, and I am sorry some of our Congressmen are not still here who earlier in this hearing wanted such information. You know, when you are sitting in this room and you are waiting your turn, you want to be the researcher who can answer some of the questions that they are asking. I hope the Congressmen can be referred to the earlier hearings.

Instead, what I am concentrating on today is the double jeopardy that battered women go through, even when we think we are doing the best in changing some of the laws for them.

We had no idea when we first recommended some of the changes to help battered women get free of batterers through some changes in the civil laws, particularly dissolution of marriage laws, that what we would face were men who would not let these women go, no matter what we would do. The point of separation is, indeed, the most likely time that a woman and her children may be killed. It is also the time period when they have the least amount of support for them.

One of the most insidious forms of keeping battered women in the situation, even when we help them learn how to terminate the relationship and develop some of the self-esteem that they lost through that relationship is the new trend across this nation in joint child custody and visitation laws. The trend in this country which is an important one, is towards having divorcing men, as well as women, have their rights respected as to access to their children.

Unfortunately, these new laws are placing battered women in jeopardy because they must be the ones to effect the visitation, or even more insidiously, they are not permitting them to leave the community should the woman need safety. I could not help but think, when Mrs. Martin was testifying earlier today, how, if she were to go through the courts and if there was a joint custody law, she probably could not leave, as was suggested, even though that maybe the only way she will be able to get free from this man's abuse.

The courts throughout the country are indeed keeping women there. I have changed much of my work to be more of a forensic, rather than a research and a clinical psychologist because that is the area that I see battered women needing our assistance by being able to educate the courts. It is slow. It is judge-by-judge, courtroom-by-courtroom. My work takes me all over the country. I have testified, I think, in about 30 States, as well as in Federal court, in criminal matters as well as in civil matters. If we continue this way of educating people, I think we will not have the kind of timely relief that battered women and their children need.

I have made about 10 recommendations attached to my testimony. I know we do not have time to go through all of them, but I just want to touch on some of them very briefly.

The first one is that I would like to see this Congress make some recommendation to the various States that are looking at joint custody or who already have joint custody laws to take the onus of burden of proof away from the battered woman, that she has to prove that she is battered before an exemption will apply to her, and instead, place it on a batterer to prove he is a fit parent.

We know from our research data—that children who witness battering are 700 times more likely for boys to grow up and be batterers, even if they are not abused, but if they simply witness their father beating their mother. We know that that puts women at a greater risk should they find themselves in a relationship with a batterer, that they will have more difficulty in leaving that relationship.

I also believe that we need to change our labels in our child protection laws so that witnessing abuse in their home is defined as a threat of harm to children. If we make those kinds of simple changes, I believe we can get child protective services to become more involved in the psychological abuse of children and the extreme impairment to their development that results from staying in these homes or having to go back and forth between a mother who is trying to protect herself and who is very fearful of the batterer and a father who is still psychologically abusive, if not physically abusive, certainly intrusive in the child's life and so restricting the child's healthy development by having such a lack of respect of those people's own boundaries and those people's limits that they cannot develop healthy, in a psychological way.

So I think if we can do some of that, we will make some steps toward improvement. The State of Minnesota has taken some steps and added to some of their laws so that they are able now to prevent any batterer who poses a threat to the child's mother or to the child not to have visitation unless it is supervised. I think we need to encourage those kinds of laws on a state-by-state basis so that we protect children and we protect woman.

In my prepared testimony, I give some horror stories. I must tell you I just flew here this morning on a red-eye special, which I am sure you are familiar with, from California, where I testified in San Diego in a death-penalty phase of a case with a battered woman who was accused and convicted of conspiring with a group of marines to kill her abusive husband.

In that courtroom, testimony in the guilt phase on the abuse was so severely restricted that that jury did not hear what this woman had gone through and could not consider that in their deliberations. Interestingly, in the penalty phase, which is what I testified in, I was permitted to testify to her abuse.

The judge made a comment to the lawyers that he knew who I was, or he knew of me, because he had just heard a different case earlier that year which was a Montana case that I worked on in 1983. What he said was that I must have been in cahoots with the lawyers and that my work could not have possibly been based on any valid information at that time. And so what he did in this earlier case was change custody to a man who forum-shopped; who previously had gone all the way up to the Montana Supreme Court, where they upheld the district court's recommendation that the father not have custody of this child. The mother applied to the court and did get permission to move to San Diego. The jurisdiction was changed to California by this judge in San Diego and who then gave joint custody to the mother and father in that court even after Social Services, other psychologists and another lower court adjudicated that the child had been sexually abused by this father.

So we are now seeing judges who are uninformed and unimpressed by abuse data like this judge who changed custody in this case because he claimed the mother was overly restricting the father's access to this child.

Now this mother, surely, was placed in a double bind. If she would have permitted the access to visitation that was unsupervised, Social Services, which was involved in the case, might well have removed the child from her care because she was not taking protective steps for a child that they adjudicated was sexually abused. If she did not grant the visitation, then the judge took the child away from her. That is what this particular judge, who is hearing the same death penalty case, has done. Clearly, he does not understand what has happened to battered women and that this is a terrible legal jeopardy for both of these women who are in his court. This is magnified across the country and I am not quite sure exactly how we stop it; how we stop the harassment that many of these men use the court systems to perpetrate on women and on children.

Many of the men stop their physical abuse only to use the courts to starve women because they have to go back in again and respond to all of their motions. We have to find a way to be able to do that without taking away people's right to use the courts for legitimate redress.

We also have to find a way to stop the mediation, the forced conciliation and mediation that battered women are, at times, forced to go into. The courts have looked upon this as a way to try and resolve some of their very heavy caseload. In some cases, that is perfectly appropriate and useful; for battered women, it simply is not. You cannot mediate and negotiate with someone who is willing to brutally hurt you at the same time. You are going to give away everything in order to feel safe. That is what happens to battered women.

So we need to find some way to tighten up those loopholes in those laws.

I do not go quite as far as Dr. Ewing does in changing some of our self-defense laws to psychological abuse, although I think we have the technology to do it adequately. We can, as psychologists, measure psychological abuse. We can differentiate that now. We can measure psychological impact from all the different forms of violence, which is one way of saying we do not just have to depend upon the woman's story or the child's story. We can have some independent corroboration.

I would like to see us start incorporating that in our self-defense laws. I think we also need to change some of our civil tort statutes and eliminate the time period that we have for filing claims. I believe it was District Attorney Holtzman who talked about that earlier.

When we have a time clock ticking for people who are battered, we put them at a disadvantage. Incest victims, battered women, battered children do not always know when they are really harmed; and even when they find out that they are harmed, they may not be psychologically ready to take legal steps that they might be ready to do after they have had some treatment. So I would like to see us remove that from some of our statutes.

I would also like to suggest that we pay very special attention to poor women and women of color and children of color. My experience in the legal system over the last 10 years is that those are the people who are even more disadvantaged than other women are. In my data of homicide cases of battered women who have killed in what I believe is self-defense, black women were twice as likely to be convicted of a homicide, as compared to nonblack women, even when all the other factors were held pretty constant. So I think we have some triple jeopardy, if you will, for women of color and of poor women.

Finally, I would recommend that Congress appropriate more money for research funds. I would have jumped in during the debate about pornography on the fact that we need more research in that area, and those are funds that should be allocated so that we can clearly look at some of the social science data which do not yet make the kinds of correlations discussed, even though we know how abhorrent it is to have sexually explicit and sexually violent materials and what that does to people's self image. We do not have the social science data yet, and I think good research monies can provide it.

We have some fine researchers across the country, some good psychologists of whom I am aware.

Lastly, I would recommend that every single mental health, medical, education and legal training institution, if they get Federal funds, be required to have course work in the whole area of domestic violence and violence against women and children. We are not training people to deal with it adequately and they are perpetuating even more abuses on people.

Thank you.

[Prepared statement of Lenore E. Walker follows:]

PREPARED STATEMENT OF LENORE E. WALKER, ED.D., A.B.P.P., PRESIDENT AND PSYCHOLOGIST, WALKER AND ASSOCIATES, DENVER, CO

RECOMMENDATIONS

1. It is recommended that child custody laws be changed to exclude joint or exclusive custody as an option for BATTERERS who do not demonstrate competence to jointly or individually parent their children without posing as a threat to the women or children. The burden of proof should be upon the abuser to prove he has changed his behavior and has the requisite parenting skills.

2. It is recommended that no visitation or supervised visitation be granted to BATTERERS until they demonstrate they are no longer a danger to the battered women or children. The burden of proof should be upon the abuser to prove he has changed his behavior and has the requisite parenting skills.

3. Family court laws should be changed to prevent batterers from using the courts to continue his abuse and harassment of battered women.

4. Child abuse laws should be changed to reflect the threat of harm to a child who witnesses spousal abuse. Child Protective Services should be empowered to act and provide services on behalf of these children and their mothers. It is especially urgent to upgrade child protective services workers' ability to properly investigate child sexual abuse claims in high risk violent families during the period of divorce.

5. It is recommended that mediation not be used as an alternative to regular court hearings in cases where wife battering is alleged.

6. It is recommended that the time period for filing civil tort claims for damages be eliminated in cases where women and children have been abused in their homes.

7. It is recommended that self defense statutes be amended to include justification for those battered people who demonstrate that battered woman syndrome, battered child syndrome, battered man syndrome, child sexual abuse accommodation syndrome, rape trauma syndrome and other subcategories of Post Traumatic Stress Disorder caused them to reasonably perceive that serious bodily harm or death was imminent.

8. It is recommended that the rules of evidence be modified to reflect battered women's experiences and ability to present their best version of the facts. Battered women perceive their abuse in the context of their environment. It is perceived as a pattern, not just a single, discrete event. The interviews with battered women reveal that they are more likely to tell their story if allowed to speak in their own way. When their attempts to speak are objected to because of legal procedures requiring them to separate facts from opinions and context, they perceive it as being silenced once again.

9. It is recommended that the committee pay special attention to the needs of poor women and women and children of color who are even less well served by the legal system.

10. It is recommended that all mental health, medical, educational and legal training institutions be required to teach professionals the issues confronting battered women and their families. It is also recommended that all federal and state agencies whose jurisdiction may impact upon battered women provide employees with in-service training in this area.

DOUBLE JEOPARDY FOR BATTERED WOMEN

Invited Testimony To the
Congressional Committee on
Children, Youth, and Families
September 16, 1987

Lenore E. Walker, Ed.D.
President and Psychologist
Walker & Associates
50 S. Steele Street, Suite #850
Denver, Colorado 80209
(303 322-3444

In the past decade researchers and service providers have noted the dramatic change in the attitudes of the American public toward battered women. For the most part, battered women are no longer automatically seen as masochistic or even as deserving of their fate, but rather as the victims of the abuser's violent acts. Despite these major changes, there has persisted a naive belief that if the battered woman could be persuaded to terminate her relationship with the batterer, then she will be able to live free from actual or threats of violence. The batterer's continual abuse through stalking the woman and harassing her, especially around child custody and visitation issues was unanticipated. Long after the marriage bonds are severed, battered women's lives are still in jeopardy. Men who batter women simply do not let them go.

JEOPARDY CONCERNING CHILDREN

Child Custody

RECOMMEND CHANGES TO JOINT CUSTODY LAWS:

One of the major issues which keeps a battered woman tied to the man who has abused her is the presence of children. The trend toward a presumption of joint custody, which is so popular in a large number of states, actually holds a battered woman hostage in the same community as the batterer, allegedly for the sake of the children. She usually is not permitted to move or make any major decisions about the children without the court's permission. This effectively continues the batterer's power over her life choices and it keeps her in close enough proximity for him to continue his abusive behavior including surveillance and harassment toward her.

Under these new child shared custody laws, joint custody may be challenged for cause but this usually means that a battered woman must provide the court with adequate proof that she has been battered and that the children were harmed. Even if she can prove her own abuse, which is most difficult, the impact on the child of her abuse is not understood by the courts. Many courts demand evidence that the woman is still in danger of being harmed which is difficult to prove if the woman is exercising her newly learned skills to protect herself from the abuser. Further, some courts expect her to live up to the unwritten "good" battered woman standards which frequently means she cannot fight back to protect herself or her children, she cannot demonstrate her legitimate angry feelings towards the abuser, and she cannot evidence any symptoms of psychological distress from the abuse such as Battered Woman Syndrome.

Custody evaluators, often appointed by the court to assist in making custody determination also place a battered woman in double jeopardy through their erroneously determining that the psychological signs of Battered Woman Syndrome, which is a subcategory of Post Traumatic Stress Disorder, are evidence that the woman will not be an effective parent. These professionals often do not know that this situational disorder will usually abate once the woman perceives safety. Custody evaluators are frequently untrained in the area of domestic violence and are easily seduced by the batterer's apparently charming and sincere manner. In Denver, one district court judge recently estimated that the man wins custody in at least 40% of the contested custody cases, many which are brought by men who batterer woman. For some battered women, the only way to be free of the abuser's influence is to leave home without her children. Few women are willing to do this voluntarily.

> In one recent case, my client was told by the custody evaluators to move back to a small, rural town or the evaluator would recommend that the father have custody of the 3 young children. This man admitted beating his wife in front of the children and then, forcing them into his car in an attempt to kidnap them. But, the evaluators down played the importance of this information instead placing greater reliance on the man's promise never to do it again. He was a well dressed, prominent lawyer in that town. They believed that the children's observable anxiety would abate by moving back to the small town. My client felt too scared and unprotected to return and so, was forced to allow 2 of the children to live with their father for six months, until a counselor from the abusive men's program helped change the custody team's opinion. Six months was too long a period of time for a 3 and 5 year old child to be away from their

primary care mother.

There are no data to document that joint custody with parents in close proximity is beneficial to the child who witnesses or experiences violence at home. In fact, the only research available which demonstrates that joint custody is in the best interests of the child is only when both parents can agree and jointly plan their child's future. This cannot happen in battering relationships because batterers who need power and control, cannot engage in shared activities. Moving children who have witnessed violence at home back and forth on weekly or biweekly schedules robs them of their need for stability and consistency, two essential elements for positive child development which are missing in abusive homes. At best, these children are forced to cope with transitions between totally dissimilar homes. They must learn to negotiate with a man who is known to use terrorist tactics in his interactions. Joint custody is not in the best interests of the child who has lived with witnessing or experiencing family violence.

> In one of my cases in Iowa, a six year old boy has spent the past two years living alternate weeks in each parent's home. The child has significant emotional problems which are seen as the mother's fault because she cannot manage his angry aggressive behavior. Another explanation, that the child is only able to express his anger toward his mother because he is too scared of his father is not given much credence. The court is unwilling to change the joint custody arrangement without proof that the child is actually being physically abused. Evidence that witnessing parental abuse is damaging to a child's development is not sufficient for this court.
>
> This woman has been continually harassed by the child's father and just last month was again beaten by him while the child and his friend looked on, helplessly. Only after the children reported what they witnessed to the police were assault charges filed. Still, the court refused to change this dangerous custody arrangement. This battered woman's choice is to give up her child or continue to be abuse.

I URGE THIS COMMITTEE TO RECOMMEND CHANGES TO THE JOINT CUSTODY LAWS TO EXCLUDE BATTERED WOMEN. THE BURDEN OF PROOF SHOULD BE SHIFTED TO THE ABUSER TO PROVE HE IS CAPABLE OF JOINTLY OR INDIVIDUALLY PARENTING THE CHILD.

Visitation:

RECOMMENDATION - NO VISITATION FOR BATTERERS WHEN DANGEROUS TO MOTHER AND/OR CHILD.

Many battered women are forced into dangerous contact with the abusive partner in order to follow court orders concerning visitation arrangements for the children. Frequently, these children do not want to go; they are frightened that they will not be returned, that their mother will be harmed, or that they themselves might be hurt. Children who witness their father beat their mother demonstrate a range of psychological symptoms which interfere with their healthy development. Some researchers compare their responses to those of children who give up under active war conditions. Often, they become so anxious that they develop physical and psychological trauma sequelae. Sometimes the anxiety can be traced directly to watching the violence or being yelled at themselves. Other times, they pick up their mother's fearfulness. In any case, this anxiety interferes with children's ability to grow, mature, and develop good learning skills.

Studies demonstrate that children who witness family violence are 700 times more likely to become abusive if they are boys and submissive if they are girls. Witnessing violence must be labeled as emotional abuse and considered a threat of harm to children in the child abuse codes so that Child Protective Services and social services departments nationwide can intervene and protect battered women and their children.

Frequently, battered women who are more attuned to danger cues, recognize their children are at risk of harm before it becomes apparent to others. If they report their fears, they typically are ignored, labeled hysterical, or seen as revengeful. My experience urges more careful attention be given to their reports.

> In one recent Colorado case, a woman I will call Sue was so seriously battered by her second husband that she was hospitalized several times. In order to protect the two older children Sue sent them to live with their father in a midwest state. Evidence of the abuse including proof of bullet holes on the ceiling of their home which came when he shot at her were introduced at the divorce hearing. She was awarded custody of their two year old child while he was granted liberal visitation privileges.

Sue had to hire a body guard to help her conduct the visitation exchanges. After several trips, the body guard quit because of the peril he was placed in. Sue tried to get the court to modify the visitation order, but the best the judge would do was to allow the exchange to occur in a public place rather than at Sue's home. The child continued to return from the visits scared and upset, telling Sue tales of guns and drugs. During one visit two thugs broke into the father's home, beat him up, and tied up the child and placed him in the closet. Still no relief was granted from the judge who also had presided over the thugs' trial and sentenced them for their criminal acts.

Finally, Sue was so frightened and desperate that she took her child and fled the state without the court's permission. She wanted to be closer to her other children and as far away from the batterer as possible.

The judge was so angry that he changed custody to the batterer in an export order. He found her in contempt of court and ordered her to cure her contempt by giving the child to his father. The Colorado Supreme Court later stayed the action in a special writ.

Sue had written the judge a letter giving a forwarding address, so he did not file federal kidnapping charges. But, the child's name was placed on the missing child's list and his picture appeared on the milk cartons despite my pleas to the local Child Find agency not to encourage this abusive man. Sue lived underground and in fear for over one year while the legal proceedings went on around her. Her lawyer and I were warned we were in danger of contempt if we did not give the court her address if and when we learned it. Two states fought over the jurisdictions.

After two years, Sue once again has legal custody of her son. But, the child's father still has liberal visitation rights provided the child's psychologist agrees it is in the child's best interests to see his father. Still ignored is the danger to the battered woman should he exercise these visitation rights. State Supreme Courts have gotten involved in other battered woman decisions, too.

In another case, this time in Montana, the State Supreme Court has taken jurisdiction in the supervision of a child's visitation orders after the father was allowed to use the legal system to harass his formerly abused wife. Here, the father first accused the mother of exposing their four year old child to a man who sexually abused him and when that complaint was unfounded then accused her of the alleged sexual abuse. With the encouragement of a psychologist who testified that he monitored the father and child using videotapes, the father kidnapped and held the child in a secret place for five months. Even after he was jailed for contempt, it took another week for the father to turn over the child to Social Services. To make matters worse, this man court shopped, persuading a Tribal Court and then the Juvenille Court to take jurisdiction. Finally, after another six weeks, the Supreme Court returned the child to his mother and stopped visitation until the child's safety could be determined. Most of the child's symptoms of emotional distress have abated after six months.

Several psychologists treating the child and the mother, including myself, have come under the threat of lawsuits for stating our opinions about other psychologist and lawyers actions. I have had to hire a lawyer to deal with this case. It is still not over after three years of litigation.

Child Sexual Abuse:

RECOMMEND NEW LAWS TO PROTECT CHILDREN AT HIGH RISK FOR INCEST

Research demonstrates that children who live with men who physically, sexually and psychologically batter women are at higher risk to be sexually abused. This is particularly true when the batterer is known to sexually abuse his partner. These men have not developed the normal boundaries between themselves and other family members and do not perceive that incest is either wrong or harmful to the child. Assessment techniques make it possible to identify some of those children at high risk, especially when pre-incest sexual conditioning is observed. Frequently, if a battered woman reports her observations and suspicions, she is viewed as vindictive and punished by the social services or court system. Her sensitivity to these conditioning activities, often from her own sexual abuse either as a child or an adult, is reinterpreted to mean that she is over identified with the child. Many battered women do not report their suspicions until they are out of the dangerous relationship. Yet, accusations of sexual abuse during custody fights are the least well investigated. I recommend that child protective services workers be trained to better evaluate accusations of child sexual abuse in battering relationships, especially during divorce.

Double Jeopardy with Batterer's Use of the Legal System for Harassment

RECOMMENDATION-COURTS BE EMPOWERED TO STOP MEN FROM USING THE LEGAL SYSTEM TO HARASS THEIR FORMER SPOUSES.

Some men literally starve battered women by refusing to comply with orders until the very last minute when they give her only part of the money she is owed. Women are forced to spend tens of thousands of dollars to fight battles in court instead of in their homes. They borrow the money from family, sell their assets, or make payments for long periods of time. Many women just can't handle the financial stress, they give in to the batterers' demands hoping he will stop when he gets what he wants. Unfortunately, in many cases, he continues for years.

> In a recent Oregon case, a woman killed her former husband after 12 years of being dragged into court. Although he lost each motion and refused to comply with the court's recommendations on how he could get what he wanted, he kept filing again and again. After being served with one more set of papers to appear in court, the woman went to plead with him to stop the harassment. THe visit ended when he threatened her and she shot and killed him.

This is a dramatic case but it underscores the detrimental effect such continued use of the legal system has on a battered woman. It prevents her from healing and getting on with her life. New father's rights groups are encouraging the continuous use of the legal system. In Denver, the local group is headed by the abusive ex-husband of one of my clients. He has assault convictions for beating up two different women. Allowing batterers to take over these organizations confuses their purpose, which is to provide advocacy for men who are legitimately denied their rights.

Double Jeopardy Through Forced Mediation

RECOMMEND MEDIATION NOT BE USED IN CASES WHERE SPOUSE ABUSE IS ALLEGED.

A popular alternative, to reduce litigation in civil and criminal areas has been to force disputants to mediation. Its cost saving features and the high rate of voluntary compliance in certain cases makes mediation an attractive alternative, especially in jurisdictions with crowded court calendars. It is dangerous for battered women to go to mediation even with sensitive and well trained mediators. In order for mediation to be effective both parties must be able to negotiate fairly. Battered women who are always scared of making the man angry cannot bargain away their safety. They frequently have made major concessions prior to coming to mediation and perceive any further compromise as unfair. Often, they give in to anything just to get away from the man's intimidation. Batterers use coercive techniques to get what they want. They will not play by fair rules or negotiated settlements. Thus, the psychological characteristics of batterers and battered women make mediation a poor choice for resolving their disputes.

At the United Nations End of the Decade for Women Conference in Nairobi in 1985, I attended the sessions on Women, Development, and The Law. There I was struck by the similarities of mediation to the old custom of having an honored wise person resolve disputes in developing countries. Only when the laws were changed and dispute resolution techniques codified could women make progress toward equality in those countries. We should pay attention to this lesson. It is my opinion that mediation is a step backward, not forward in our nations quest for equality.

Double Jeopardy in Civil Tort Actions

There are numerous other areas of double jeopardy for battered women in civil and criminal proceedings. Battered women may not recognize or be in a position to file a civil tort action for damages within the time period specified in most state courts. My research on learned helplessness would suggest that they will be less likely to file for relief, even after they learn they have been harmed. I have worked on cases, of women who want to file as long as 40 years after termination of the relationship. Perhaps financial jeopardy will act as a deterrent to some abusive men. This should also hold for child sexual abuse victims. The healing process can take an unpredictable number of years, even after discovery of the injury. I RECOMMEND THAT THERE BE NO TIME LIMITATIONS ON WHERE A BATTERED WOMAN OR CHILD SEXUAL ABUSE VICTIM CAN FILE A TORT ACTION FOR DAMAGES.

Double Jeopardy When the Battered Woman Becomes a Criminal Defendant.

Much of my forensic psychology work has been in the criminal courts where battered women victims become defendants because of acts they do to protect themselves from another battering. Sometimes they commit crimes under duress such as forging checks, selling and possession of drugs, and burglary. Others kill in self defense or defense of others such as their children. Other family members also kill to protect the battered woman. I have testified in cases where fathers, sons, and daughters were charged with murder after killing an abusive son-in-law, father, or step-father or even mother. Providing a defense for these victims is difficult and costly. Often cases must be heard several times, usually because of the unclear status of introducing Battered Woman Syndrome testimony in the court. iT IS RECOMMENDED THAT THE NATION'S SELF DEFENSE STATUTES BE AMENDED TO INCLUDE JUSTIFICATION FOR THOSE BATTERED PEOPLE WHO DEMONSTRATE THAT BATTERED WOMAN SYNDROME, BATTERED CHILD SYNDROME, BATTERED MAN SYNDROME, CHILD SEXUAL TRAUMA SYNDROME AND OTHER SUBCATEGORIES OF POST TRAUMATIC STRESS DISORDER CAUSED THEM TO REASONABLY PERCEIVE THAT SERIOUS BODILY HARM OR DEATH WAS IMMINENT.

IT IS ALSO RECOMMENDED THAT THE RULES OF EVIDENCE BE MODIFIED TO REFLECT BATTERED WOMEN'S EXPERIENCES AND ABILITY TO PRESENT THEIR BEST VERSION OF THE FACTS. Battered women perceive their abuse in the context of their environment. It is perceived as a pattern, not just a single, discrete event. The interviews with battered women reveal that they are more likely to tell their story if allowed to speak in their own way. When their attempts to speak are objected to because of legal procedures requiring them to separate facts from opinions and context, they perceive it as being silenced once again.

Double Jeopardy For Poor Women and Women of Color

I would like to RECOMMEND THAT THIS COMMITTEE PAY SPECIAL ATTENTION TO THE NEEDS OF POOR WOMEN AND WOMEN AND CHILDREN OF COLOR. My most recent research analyzing 125 battered women who killed in self defense indicates that Black women are twice as likely to be convicted of murder than are white women even when all other factors are held constant. Poor women are less likely to receive an adequate defense.

Finally, victim witness programs which are usually located in prosecutor's offices are perceived as the battered woman's best resource next to battered woman shelters until the victim becomes a defendant. Then, the potential for violating her rights to confidentiality, especially if she has used their services, is a high risk. As we design better laws and procedures to criminalize domestic violence, I add a caution not to take away any defendant's rights. Today's victim might be tomorrow's defendant.

Thank you,

Lenore E. Walker Ed.D.,A.B.P.P.
Diplomate in Clinical Psychology
Licensed Psychologist #419
Member National Registry of Health
Service Providers in Psychology

Chairman **Miller**. Thank you. Mr. Pope.

STATEMENT OF DARRELL H. POPE, DET./LT., COMMANDING OFFICER (RETIRED), SEX CRIME UNIT, MICHIGAN STATE POLICE, PENSACOLA, FL

Mr. **Pope**. Thank you, Mr. Chairman. I appreciate the opportunity to come before you to testify.

Due to the time limit, since my testimony is already entered, I would like to address a few issues.

Having been a police officer for 30 years, maybe I can look at some things with a different eye than our former witnesses, and I agree with what they have been saying.

I would like to address three issues: the attitude of police officers toward the victim of sexual assault; number two, the effect of pornography on the sexual offender; and number three, possibly some solutions.

I was commanding officer of the Sex Crime Unit of the Michigan State Police for the 12 years prior to my retirement. During this time, in the State of Michigan, we had a law that requires law enforcement agencies, upon arrest and conviction of a sexually deviant person, to submit forms to the Michigan State Police, to that Sex Crime Unit.

During this period of time, we accumulated, from 1956 to the time that I did my research in 1977, we accumulated some 38,000 case histories, which included everything from exhibitionism to lust murders. The research that I did was based on that, plus the opportunity that I had in that period of time to work with agencies within the State of Michigan, as well as on our own investigations of sexual assaults of women and children in our State.

We dealt with, in those 12 years, going back and looking at and again, I am estimating the number—around 4,000 cases, including, as I say, exhibitionism all the way to lust murders; so we had an opportunity to talk not only to the victims, and in some cases, the offender, but also the police officer.

I look back at my own history, having started in this business in 1954, the training I received at that time was zero. There was no training. We were told, "Here's a badge, and a gun: go get them." That was predominant, I think, throughout the United States.

The attitude of police officers in that era toward the victims of sexual assault was "I don't believe it. She's lying. She's trying to cover up for some promiscuous episode that she was involved in."

That was basically—not everybody, you understand, but the majority of our officers, I think, throughout the U.S. were in that category.

I confess, I was guilty of that at the time when I first became an officer because that was my training. I am not excusing it. I should have been intelligent enough to figure out something else, but anyway, that occurred.

As we progressed, it became obvious to us that there was something wrong here, and in 1967, I took command of this unit and began to work with the people, and, having an opportunity to talk to police officers, began to ask questions of why, why this, why this attitude of, "women are wrong?" They said, "Well, that's the way my training officer taught me," and we go back and back.

We were given the opportunity then to begin to develop some training programs within my own department which later we were able to enlarge to where we not only taught sex crime investigation, but we used in there—we brought in victims. As we have heard this morning, we had people in Michigan, women who were willing to come before these training sessions and tell the men what it was like to be a victim.

As I think has been alluded to here this morning, the psychological factors—and I am sure that you all agree—are horrendous. They are just horrendous. We, as police officers, did not understand that because we had not been trained. We had not been educated.

We began to teach throughout the state the fact of the attitude of dealing with women, and as I will allude to a bit later, some solutions that I feel can help is that we have just got to do something here. We have to do something, and we did. They gave us the opportunity to travel, not only in Michigan, but later on in our career, we traveled in other states, lecturing to other states, again, always bringing up the fact of the attitudes of officers towards the victims of sexual assault.

We later began to address—and again, these things take time—the fact that most states did not have any laws covering the assault against wives, girlfriends. It was one of, "Well, we can't do anything." Our hands were tied, and as you know, sir, unless you have a law, the police officer cannot do anything about it. You need effective laws to do that and we did not have them.

We would try and help the victims, the battered victims, the victims who were assaulted, by offering to transport them places, but our hands were tied. And again, in the early years, we did not have the availability of crisis centers and that type of thing to help. But the attitudes, through training, began to change. In the mid-70s, I think, I observed a significant change, but it began back in 1968 with the LEAA funding, which allowed a lot of officers to go to college, to go to some training schools and become more knowledgeable of the attitudes of women and what psychologically and physically took place.

Thus, we saw again a change in attitude, but not a significant change. It was a very minute—it was only those officers who took advantage of the LEAA, which was very small, really, when you looked at the entire number of police officers sworn in the United States of America.

But it began to change. We had a few, here and there. You have heard testimony about different States. We saw some changes and that was good. We needed that. We still need more.

The attitudes have got to be changed of police officers towards the sexual assault of not only strangers, but of the domestic areas, the areas of the wife, the girlfriend.

The number two issue is the issue does porno, in fact, affect sexual assault, and my answer very explicitly is yes. Being commanding officer of the unit, and having the availability of these sexual reports, in 1977, I did a research project where I looked at 38,000 case histories and found that 41 percent of those reports indicated that, in fact, pornographic materials were used just prior to or during the actual act.

In my testimony that you have, there are a couple of these case histories that I have cited, actual case histories, and I would like to cite just one more.

This involves a 19-year-old boy who had gotten a hold of a pornographic material depicting autoerotic activity. Now, the magazine—and I do not have a picture of it with me, sir, but we have actual photographs of the boy who had replicated the magazine pictures. The young man is hanging by a rope around his neck, wearing many female garments, which is usually the case in autoerotic types of situations, and the magazine article, very ironically, lay at his feet, open to the page which he was replicating. In reading the article, the problem was that the article did not tell him he could die. It just told him about the wonderful experience he would have.

That is only one. I could tell you of case histories that I have worked on in every area, everything from exhibitionism to lust murders.

In 1978, we began to develop what we call a crime scene behavior analysis, in which we could profile the sexually motivated homicide and tell you the kind of people who did it. Again, in doing this, in talking, I had the opportunity to talk to some of these people who had committed lust murders. It was very fascinating. When you asked the perpetrator, the sex offender who would indicate or admit that he had used it, almost to a man, his answer was, "I used it for one of several reasons: One, to encourage me." He said—in some cases, I can remember talking to one young man who was 19 years old, he said, "It excited me and then I got to thinking about it and I wanted to know how it felt."

This is this young man's answer. He wanted to know how it felt to rape a woman and kill her. And by the way, this was his girlfriend. So he did it. And when we arrested this young man and searched his home, we found a pornographic magazine depicting this very thing that he done. By the way, he had stabbed her 57 times.

Again, not to take up that much time, but we could go on with these stories. Does it affect it? You bet it does. It does affect it.

I would like to spend a lot of time talking to the committee about many areas, but the third area I would like to look at are some solutions as I see it, as a police officer, former police officer.

Training. It is imperative that we train the police officer, right from the man who receives the call at the desk, right on up through. As you have heard testified earlier, the prosecutors, the judges—we have to train these people. We have to educate them.

I think we need to do things in our educational field, in colleges, in the criminal justice programs, things like that. It is just imperative that we do that.

I think we need to educate victims. I think we really need to educate victims. I think we need to have, from whatever sources, available means to educate these victims in the fact that they are victims, and I am looking at it from a policeman's point of view.

I think, sir, that thirdly, we need laws. You are the experts in the law field. Does it start here at the Federal level or does it start with the State level? I think that—and has been testified earlier—

you are setting the example. You are championing the cause. You are leading the way. I think that things that you say to, perhaps, your state government, your people back in your home state and my home state and those others folks' home states, I think will help. We need to get busy and do some things.

Thank you, sir.

[Prepared statement of Det./Lt. Darrell H. Pope follows:]

Prepared Statement of Det./Lt. Darrell H. Pope, Commanding Officer (Retired) Sex Crime Unit, Michigan State Police, Pensacola, FL

I would like to address three issues:

1. The attitudes of policemen toward the crime of rape and toward the adult female victim of that rape.
2. The effects of pornography on the sex offender; and
3. Some thoughts on a solution to these problems

To introduce myself to you and provide some background on myself -- I am a retired Detective/Lieutenant from the Michigan State Police, with a Master's Degree from Michigan State University. My last 12 years with the State Police were spent as the Commanding Officer of the Sex Crime Unit. In this Unit we kept a file on all persons arrested and convicted for a sex offense according to the laws of the State of Michigan. These reports were submitted to us from all police agencies in Michigan.

In 1967 the Sex Crime file had about 13,000 reports. When I retired, there were about 48,000 reports. In 1968 we computerized this file and were the first State Police agency to have a state-wide computerized Sex Crime M.O. file. By doing this, we were able to utilize this file to do research in order to ascertain the many aspects of sex crimes relative to profiles of the victim as well as the assailant. Via this system, we learned a great deal about many aspects of sex crimes.

The first issue to address here is the attitude of police officers in the U.S. towards the crime of rape and, directly related, the attitude towards the victim. Back in 1954 there was not much training available for police officers except in the big cities and the State Police. I was first a Deputy Sheriff and at that time, the basic attitude was that most women were not really raped but it was a cover-up for their being promisicuous. Training was not available as to how to investigate a rape other than the normal training for investigation of all crimes.

In 1956 I joined the Michigan State Police and received some training. However, it was not as extensive as it currently is. Again, there was an attitude by police officers that most rapes were not really rapes, and it was for sure that a female hitchhiker or prostitute were just asking for it. Also, women who met men in a bar could not be raped as they were just asking for it. This attitude prevailed throughout the 60's - until

L.E.A.A. funding came into play in educating the police officers as well as other arms of the Criminal Justice field. (I will address this at a later time.) The problem was that even though some police officers took advantage of the L.E.A.A. funding, we still did not see a big change in attitudes.

Some officers throughout the U.S. began to realize that there were some areas of the police officers' attitudes that were archaic. The attitudes towards sex crimes against women was one of those, and it occurred all the way from the time the report was received by a dispatcher (and his attitude), to the time the case was to go to court. If a woman did go to court, she was made to tell the whole story on the witness stand in front of not only the jury and judge, but a courtroom full of spectators. As if this was not bad enough, she was then cross-examined by the defense attorney who could ask her any questions he wanted to about her past sexual activities. Thus - trying to destroy her credibility with the jury.

In 1969 I began to realize that we police officers were wrong about our attitudes towards sex crime victims. At this point, and being involved in maintaining the sex crime files and in reading the reports and assisting many police agencies with their investigation of the crimes, it became obvious when talking to a number of female victims, that there were a lot of extenuating circumstances. Let me give you an example of what I mean:

Many victims may wait for 48 hours before reporting the crime, or even longer. Many police officers believed that because of the delay in reporting, that there really wasn't a crime but that they were trying to hide something. What we did not know, was all the psychological problems she was facing -- like feeling dirty, guilty, ashamed, and many other inner feelings. When interviewing them, many expressed to me: "What will my friends think?"; "What will my husband think?" All these types of thoughts due mostly because of our society's archaic thinking about rape victims. Many times women, in telling a police officer about being attacked, will laugh. We did not understand that it was a definite psychological release.

In the early 70's, the State of Michigan began to look at a model "Sexual Conduct Code," and in 1975, the state passed a Sexual Conduct Code which did a great deal to protect the

VICTIM AND ALSO HELP THE POLICE OFFICER AND THE PROSECUTOR. ABOUT THIS SAME TIME, I BEGAN TO TRAVEL AROUND THE U.S. LECTURING TO POLICE OFFICERS. THE ONE MAJOR THING I FOUND IS THAT THEY ALL THOUGHT THE SAME WAY ABOUT SEX OFFENSES AND THE ADULT VICTIMS. IN MICHIGAN WE BEGAN LECTURING ABOUT THE FACT THAT WE MUST TAKE A DIFFERENT APPROACH TO VICTIMS OF A SEXUAL ASSAULT. MANY OFFICERS FELT THAT RAPE WAS ONLY A SEXUAL CRIME, BUT AGAIN WE BEGAN TO FIND THAT RAPE IS A COMBINATION OF SEXUAL CRIME AND ASSAULT. IN MANY CASES IT IS MORE ASSAULT THAN SEXUAL. IN OTHER CASES, IT'S THE REVERSE. HOWEVER, IN THE MAJORITY OF CASES IT IS BOTH - THUS A CHANGE OF ATTITUDE TOWARDS THE CRIME ITSELF AND IN THE WAY WE APPROACH IT.

IT WAS AT THIS POINT WE BEGAN PROFILING THE OFFENDER BASED ON HOW HE TREATED HIS VICTIM AND WHAT HE DID JUST PRIOR TO THE CRIME AND WHAT HE DID AFTER THE CRIME. IN A LARGE PERCENT OF RAPES, THE VICTIM IS SLAPPED, STRUCK WITH A FIST, A WEAPON IS DISPLAYED OR SOMETIMES USED. THIS THEN BECOMES A "LUST" MURDER. TODAY, BY USE OF THE COMPUTER, WE CAN DO A GREAT DEAL IN HELPING POLICE OFFICERS CATCH A RAPIST BY PROFILING THE MAN. THERE IS A GREAT DEAL TO BE DONE AND THAT IS WHY I AM HERE TODAY -- TO HELP IN THIS MATTER.

THE SECOND POINT I WOULD LIKE TO ADDRESS IS THE EFFECT PORNOGRAPHY HAS ON THE SEX OFFENDER. THE ONE THING THAT MUST BE DONE IS TO UNDERSTAND WHAT PORNOGRAPHY IS. IN THIS WE HAVE A PROBLEM. THE UNITED STATES SUPREME COURT HAS GIVEN ONE OPINION, WHICH IS FOLLOWED TODAY. AND WHAT DOES A POLICE OFFICER CONSIDER PORNOGRAPHIC, AND SO ON. I CAME HERE TODAY TO TELL YOU WHAT I HAVE FOUND AS TO THE EFFECT OF PORNOGRAPHY ON THE INDIVIDUAL THAT COMMITS SEX OFFENSES.

IN 1968 THE SEX MOTIVATED CRIME REPORT, WHICH IS FILLED OUT BY A POLICE OFFICER WHEN A PERSON IS ARRESTED AND CONVICTED OF A SEX OFFENSE, HAS A PLACE ON THE REPORT TO MARK IF PORNOGRAPHY WAS INVOLVED IN THE CRIME. THESE REPORTS WERE MADE OUT BY POLICE OFFICERS FROM ALL OVER MICHIGAN - FROM THE ONE-MAN POLICE DEPARTMENT TO THE LARGEST POLICE AGENCIES. THUS, THERE IS THE SITUATION WHERE EACH OFFICER DETERMINES WHAT HE THOUGHT WAS PORNOGRAPHIC.

WHEN I DECIDED TO DO SOME RESEARCH FOR A PAPER DURING MY MASTER'S PROGRAM, I CALLED

MANY POLICE OFFICERS AND ASKED THEM WHAT THEY FELT WAS PORNOGRAPHIC. NEARLY EVERY POLICE OFFICER I ASKED (ABOUT 200) SAID HARD CORE - WHERE THERE ARE EXPLICIT PICTURES OF THE PRIVATES - AND SEX ACTS DISPLAYED. AGAIN, I THINK AS ADULTS WE ALL HAVE THE COMMON SENSE TO KNOW WHAT PORNOGRAPHY IS.

THE NEXT QUESTION I NEEDED TO HAVE AN ANSWER TO, WAS HOW THE SEX OFFENDER USED THE PORNOGRAPHY, OR IF HE DID IN FACT USE IT. MY QUESTIONING OF THOSE WHO WOULD TALK TO ME AFTER CONVICTION, AS WELL AS THOSE WHO WOULD TALK TO THE ARRESTING OFFICER INVOLVED WHO ASKED THEM "DID YOU USE PORNOGRAPHY JUST PRIOR TO THE ACT OR DURING THE ACT ITSELF," WAS PART OF THE RESEARCH. DURING THIS RESEARCH I WAS GIVEN OPPORTUNITY TO ASSIST AGENCIES WHERE PORNOGRAPHY PLAYED AN IMPORTANT PART IN THE SEX OFFENSE. I WOULD LIKE TO TELL YOU OF SOME TRUE CASE HISTORIES:

ON A SATURDAY MORNING ABOUT 10AM, A 32 YEAR OLD FEMALE STOPPED AT THE HOME OF A 38 YEAR OLD MALE, WHOM SHE KNEW AND HAD SOLD A BOAT TO. SHE WAS STOPPING TO DELIVER THE REGISTRATION FOR THE BOAT AND TRAILER. HE INVITED HER IN FOR A CUP OF COFFEE. KNOWING HIM, SHE SAW NO REASON NOT DO DO THIS. THEY DRANK SOME COFFEE, WHEN ALL OF A SUDDEN HE GRABBED HER AND TOLD HER "YOU ARE MINE." HE TOOK HER TO THE BEDROOM WHERE HE HAD TAPED TO THE HEADBOARD OF HIS BED, SIX 8 X 10 COLORED PICTURES WHICH HE HAD REMOVED FROM A HARD CORE MAGAZINE. HE ALSO HAD A FLOOD LIGHT SET UP AS WELL AS A 35 MM CAMERA AND AN 8 MM CAMERA. THE FIRST PICTURE SHOWED A FEMALE BEING UNDRESSED BY HER CAPTOR, WHICH THE MAN PROCEEDED TO DO. THE 2ND PICTURE SHOWED A FEMALE NUDE AND HANDCUFFED, WHICH HE DID. THE 3RD PICTURE SHOWED HER SHAVED HEAD AND PRIVATE PARTS, WHICH HE DID. THE 4TH PICTURE DEPICTED THE FEMALE BEING SEXUALLY ASSAULTED BY TWO MEN AND THESE TWO MEN WERE COMMITTING ABNORMAL ACTS, WHICH HE DID. THE 5TH PICTURE SHOWED THE MAN STRAPPING HER INTO THE ELECTRIC CHAIR, AND IN THE 6TH PICTURE HE KILLED HER. IN THE REAL SITUATION, THE MAN REPLICATED THE FIRST 4 PICTURES. THEN 5THLY HE SHOWED HER A GUN AND TOLD HER SHE WAS GOING TO DIE. IN THE 6TH INSTANCE HE WAS RAPING HER AND HAD PLACED THE GUN TO HER HEAD AND TOLD HER THAT THIS WAS THE END FOR HER. THE SUBJECT HAD BEEN DRINKING ALL AFTERNOON AND BY THE TIME OF THE LAST ACT, IT WAS ABOUT MIDNIGHT. AS HE RAPED HER, HE FELL ASLEEP AND SHE WAS ABLE TO ESCAPE FROM THE HOME.

A SECOND STORY THAT WILL HELP ILLUSTRATE THE EFFECTS OF PORNOGRAPHY ON THE SEX OFFENDER IS ONE WHERE TWO YOUNG MEN WENT TO A DRIVE-IN XX-RATED MOVIE. THE MAIN THEME WAS OF TWO FEMALE TEENS HITCHHIKING AND BEING PICKED UP BY TWO YOUNG MEN IN A CONVERTIBLE WHO PROCEEDED TO PERFORM DIFFERENT SEX ACTS ON THE GIRLS AGAINST THEIR WILL - IT THEN RESULTING IN WILLING PARTICIPATION. AFTER THE MOVIE (ABOUT MIDNIGHT) THE TWO YOUNG MEN SAW TWO YOUNG LADIES HITCHHIKING AND PICKED THEM UP AND PROCEEDED TO A WOODED AREA WHERE THE TWO YOUNG LADIES RESISTED THEIR ADVANCES. THE BOTTOM LINE -- ONE GIRL WAS ONLY 13. SHE WAS RAPED AND THEN MANAGED TO ESCAPE AND HIDE. THE OTHER GIRL WAS 16. SHE WAS RAPED AND WHEN SHE TRIED TO ESCAPE, THE BOYS BROKE HER BACK AND SHE LAY IN THE ROAD THE REST OF THE NIGHT UNTIL SHE WAS FOUND THE NEXT MORNING.

THESE ARE ONLY TWO OF HUNDREDS OF ACTUAL CASE HISTORIES WHICH I COULD USE TO ILLUSTRATE MY POINT. IT BECAME VERY OBVIOUS THAT PORNOGRAPHY CAN AND DOES AFFECT THE THINKING OF SEX OFFENDERS AND, IN MY OPINION, HAS A VERY DEFINITE AND DIRECT EFFECT ON THE SEX CRIME OFFENSE.

IN THE RESEARCH THAT I DID, I FOUND THAT 41% OF ALL SEX OFFENDERS WHO COMMITTED SEX CRIMES, FROM EXHIBITIONISM TO THE LUST MURDER, DID USE SOME TYPE OF PORNOGRAPHY JUST PRIOR TO OR DURING THE ACTUAL ACT. THE 41% FIGURE WAS FROM A TOTAL CASE HISTORY FILE OF 38,000 CASES.

THE 3RD ISSUE TO BE ADDRESSED, IS THE METHODS OF CORRECTING SOME OF THIS. IN A NUTSHELL - TRAINING, EDUCATION AND EFFECTIVE LAWS. THUS - EFFECTIVE LAW ENFORCEMENT.
I MENTIONED EARLIER THAT TRAINING HAS NOT BEEN UP TO A STANDARD THAT IT SHOULD BE. WE IN THE CRIMINAL JUSTICE FIELD HAVE DONE A GREAT DEAL SINCE 1968, BUT NOT ENOUGH. THE CRIMINAL JUSTICE FIELD PEAKED OUT IN ABOUT 1977. THEN WE OBSERVED A DECLINE IN THE STRESSING OF EDUCATION AND TRAINING AND THE IMPLEMENTATION OF EFFECTIVE LAWS. TRAINING IS ALWAYS AN ONGOING PROCESS IN ALL AREAS OF THE CRIMINAL JUSTICE FIELD. POLICE OFFICERS SHOULD HAVE TO HAVE CONTINUOUS INSERVICE TRAINING IN ALL FIELDS OF LAW ENFORCEMENT. THERE MUST BE MORE TRAINING IN THE INVESTIGATION OF SEXUAL ASSAULTS; RIGHT FROM THE INITIAL REPORT AND HOW THE DISPATCHER HANDLES IT ON THE PHONE, TO THE FIRST RESPONSE BY THE PATROL OFFICER. HIS ATTITUDE IS IMPORTANT -- KNOWING AND UNDERSTANDING THE EMOTIONAL STRESS THAT THE VICTIM IS GOING THRU. THERE SHOULD BE TRAINING BY PEOPLE WHO HAVE THE EDUCATION AND EXPERIENCE IN THE

FIELD -- TO TEACH YOUNGER OFFICERS OR INEXPERIENCED OFFICERS.

IN MICHIGAN, DURING THE TIME THAT I WAS COMMANDING OFFICER OF THE SEX CRIME UNIT, WE SPONSORED, COORDINATED AND TAUGHT A ONE-WEEK (40 HOUR) SEMINAR FOR POLICE OFFICERS FROM ALL OVER MICHIGAN, AND IT GREW TO WHERE OFFICERS FROM NEIGHBORING STATES CAME TO THIS SEMINAR. IT DID A GREAT DEAL TO IMPROVE THE ARREST RATE AND CONVICTION RATE IN OUR STATE BECAUSE THE OFFICERS HAD A MUCH BETTER UNDERSTANDING OF THE ENTIRE PROCESS, WHICH INCLUDES NOT ONLY THE INVESTIGATION BUT IN WORKING WITH THE TRAUMATIZED VICTIM. THIS PROGRAM IS AGAIN IN THE WORKS VIA THE MICHIGAN STATE POLICE. WHILE IN COMMAND OF THIS UNIT, I HAD THE PRIVILEGE OF TRAVELING TO VARIOUS PARTS OF THE U.S. LECTURING ON SEX CRIME INVESTIGATION. IN THESE LECTURES WE TALKED ABOUT THE WAY A DISPATCHER SHOULD HANDLE A SEXUAL ASSAULT VICTIM ON THE PHONE, TO THE OFFICER'S ORIGINAL CONTACT WITH THE VICTIM, AS WELL AS THE PROFESSIONAL WAY TO INVESTIGATE THE CRIME WHICH INCLUDED THE REINFORCEMENT THE VICTIM NEEDS AND MUST HAVE.

MANY COLLEGES ARE OFFERING COURSES TO POLICE OFFICERS TO BETTER PREPARE THEM IN HOW TO DEAL WITH THE SEXUAL ASSAULT VICTIM. THE MAJORITY, HOWEVER, ARE NOT. WE MUST ALSO WORK TO TRAIN AND EDUCATE THE PROSECUTORS AND JUDGES AS TO THE EXTENT OF STRESS AND TRAUMA WHICH IS EXPERIENCED BY THE VICTIM OF SUCH A HORRENDOUS CRIME.

LAWS ARE NEEDED THAT WILL ASSIST THE VICTIM AND GIVE HER GREATER PROTECTION FROM HARRASSMENT ON THE WITNESS STAND. I BELIEVE WE NEED TO DO A GREAT DEAL MORE TO HELP THE VICTIM GET THROUGH THE DIFFERENT STAGES OF TRAUMA ASSOCIATED WITH THIS CRIME. AS AN EXAMPLE, PERHAPS THE POLICE OR THE PROSECUTOR'S OFFICE COULD EMPLOY FULL-TIME PERSONNEL TO DO NOTHING BUT BE SUPPORT FOR THE VICTIMS OF CRIMES -- USING PERSONS WHO HAVE SPECIAL TRAINING IN COUNSELING -- PERSONS WITH A DEGREE IN PSYCHOLOGY BUT WITH A SPECIAL EMPHASIS ON SUPPORT FOR OR REINFORCEMENT FOR VICTIMS OF CRIMES.

IN CONCLUSION LADIES AND GENTLEMEN, IT IS IMPERATIVE THAT SOMETHING BE DONE TO DIMINISH THE CRIME OF SEXUAL ASSAULT. I BELIEVE A GOOD START IS A MOVE TO PASS LAWS TO CURTAIL PORNOGRAPHY. IT WILL ABSOLUTELY HELP IN REDUCING CRIME. IT WILL NOT STOP CRIME BUT IT SURELY WILL HELP REDUCE THE NUMBER OF RAPES WE ARE SEEING TODAY.

Chairman **Miller**. Thank you. Thank you very much for your testimony.

I am not asking you to submit a full dissertation on this, but we do not experience this kind of problem with child abuse, do we? I mean, if you go into court, the hurdles that you have to jump?

Ms. **Walker**. I do both kinds of——

Chairman **Miller**. Right, that is why I am asking you.

Ms. **Walker**. I think it is much different in child abuse if there is physical abuse present.

Chairman **Miller**. I understand all of the difficulty we have been watching, especially in my state, over the last several years of trying to prosecute child abuse and sexual abuse cases. I understand all that, but attitudinally——

Ms. **Walker**. You know, we do not, and one of the areas that I think is really significant is the danger that we, as professionals, even put ourselves in when we work in the area of spouse abuse versus the area of child abuse.

One of my very close friends, an attorney in Denver, was shot by a police officer who was divorcing—he was accused of being a batterer—divorcing his wife in the courtroom and paralyzed. I know there are cases like that all over the country. That terrified me because it could have been me in that courtroom as well. This man was angry.

What we are dealing with is the most intense homicidal rage that comes at us, not only from the men who commit this violence, but from men who do not want to hear it. Those are the people in our court system.

Chairman **Miller**. That is the jeopardy.

Ms. **Walker**. Yes.

Chairman **Miller**. Dr. Ewing, in your discussion of self-defense, some might say it is radical. I suspect there are a lot of people who would say that it is radical; except, as you point out in your testimony, there are other situations where the anticipation that you are about to enter into the danger zone, in fact, entitles you to take some actions. Obviously, the courts are full of people who argue back and forth whether or not that was reasonable action, reasonable anticipation, whether the action was justified and all that; so perhaps your notion is not as radical as it might appear at first blush. But I am troubled in this case about battered women.

Some make the decision, apparently, that the only action they have left to them is homicide, and yet you walk away from that experience essentially saying that the current system simply fails to take into account what, in fact, is taking place in these situations.

I mean, is that what you are telling us?

Dr. **Ewing**. The system, as it is structured now, creates the need that these women feel to kill and then punishes them for taking the only steps they have left to protect themselves. That is the double-victimization.

As far as the radical nature of the proposal, you are right. What I left out for the sake of time, but what I would address in response to your question is that there are many situations in which we allow people to be justified in killing other people when they are not in danger of being killed themselves.

The "true man" rule, which I allude to in my written testimony, says that a true man should not have to walk away from a threat. So in most states of this country, if you come up to me and threaten to kill me on the street, if I could run away from you—if I am the fastest runner in the world and I could get away from you with complete safety—the law says I can still stand my ground and kill you. Why? Because a true man does not walk away from a fight.

Chairman **Miller**. The other example, and I do not want to get into a legal debate here, but the other example you used is that if someone intrudes in your house in the night——

Dr. **Ewing**. Right.

Chairman **Miller** [continuing]. Whether or not they intend to kill you, you may have the right to use force to——

Dr. **Ewing**. Deadly force.

Chairman **Miller** [continuing]. Deadly force, but I assume there that you take into that court with you what would be a reasonable person's assumption that that other person did not belong in your house that night. But that is a much more difficult case to make against a spouse or a lover or a friend in some instances.

Dr. **Ewing**. That is right. I agree with that, but that is just another example of where the law says we are going to exalt personal security, psychological security, over the physical life of an offender, somebody who is breaking into your house——

Chairman **Miller**. Let me ask you if you have to go as far as you went, because I am trying to think of the tolerance of state legislatures to engage in this activity (I am not sure whether the Federal Government ought to be setting forth criminal statutes in this area). At a minimum, it would seem to me that if a person—and I have a hard time saying this because I do not think you should be subjected to the standard—but at a minimum, if you have been the victim of repeated physical abuse, at some point it seems to me that you should be able to give argument to self-defense if you start to see the same circumstances starting to formulate. I mean, there is a pattern, if I am correct, in much of this abuse. It starts, in many instances, coming home late or an argument at the—I mean, there are patterns that women recognize where they say, "Oh-oh, you'd better get out of here or you'd better hope he falls asleep or you'd better hope something happens because you're about to enter the Twilight Zone here in terms of danger."

It seems to me at some point, at a minimum, the courts ought to recognize that when a woman and her family and her children have been subjected to this kind of violence that it may be reasonable, in fact, for her now to take those steps in self-defense——

Dr. **Ewing**. I agree——

Chairman **Miller** [continuing]. Before you decide just on the psychological protection, just on the physical protection.

Dr. **Ewing**. That is the way it ought to work. What I was going to say is——

Chairman **Miller**. No, it does not work, I understand that. But is that because the law precludes that——

Ms. **Walker**. Yes.

Dr. **Ewing**. Yes.

Chairman **Miller** [continuing]. Or is that an interpretation given? So are you saying you have to arrive at more expansive definitions?

Dr. **Ewing**. I think Dr. Walker could address that. She has spent much of her career demonstrating that pattern that you talked about and in trying to testify in courts about that pattern in these very kinds of cases. I will let her tell you her experience.

Ms. **Walker**. One of the difficulties is that it is often left to a trial court judge's discretion as to whether or not to admit that kind of testimony. So only if you have an enlightened judge will you get that testimony in.

I believe—and I address it in my paper to some extent—that one of the difficulties is that we do not have that listed in the justification laws. If we were to add, I think, simply add a clause that allowed those displaying battered woman syndrome, which has abuse-accommodation syndrome or any one of the syndromes that we are now labeling them, the opportunity to provide evidence of justification, then a jury may be able to make a reasonable decision.

Now, right now, experts, if they are allowed in, can give their testimony when the woman herself may be precluded from giving that testimony because of the need for only the factual accounts that she is given in the Rules of Evidence. So I suggest changing those Rules of Evidence to allow battered women or to allow anybody, I think, to be able to give pattern testimony. You just cannot do that. Sometimes you have to stick to the discrete incident at issue and not the pattern.

In my cases, I do not find as many battered women killing afterwards; I find them killing even before an incident because they, indeed, recognize a pattern.

Chairman **Miller**. In anticipation, you are saying.

Ms. **Walker**. Yes, sir.

Dr. **Ewing**. That is also after the preceding one.

Ms. **Walker**. And they kill in the middle, you know. Just because these guys stop for a while does not mean that they are finished and not just taking a rest.

Dr. **Ewing**. If I could, I would just add to that that I think one of the areas in which Dr. Walker and I would disagree about this is that I think, even when the testimony comes in, the jury still hears from the judge that you cannot find this woman killed in self-defense unless she was in imminent danger of being killed or seriously injured and the facts only speak for themselves.

Even where the most eminent expert in the country testifies on this issue, Dr. Walker, many of these women are convicted, not of murder, but of manslaughter. Manslaughter is still a very serious offense.

Ms. **Walker**. I would agree, and we would not disagree on that. There is a lot of disagreement about jury instructions in the courts.

Chairman **Miller**. You can see that this committee obviously finds this behavior unacceptable and is looking for a remedy. It is very difficult with respect to the legal changes, but let me just ask you if I am correct, in your experience, that there is sort of a dual barrier here. One may be that the law precludes the judge or the jury from making a certain decision or the prosecutor from entering into evidence certain facts or expert testimony. It also seems, from what Mr. Pope has said, what Ms. Holtzman said, and others, that you also have an attitudinal problem within this entire establishment, whether it is from the officer who is called to the scene of a domestic incident and tries to figure out how soon he can get out of the neighborhood and go back to what he was doing, to the entire court system, the justice system. Perhaps there we have more opportunity because we have, from time to time, tried to provide training money and money to change some of these attitudes. LEAA was an example, although I am afraid at that time they were buying more hardware than changing attitudes. If I look in the closets of my police stations, we were ready for anything.

The Russians ought to be negotiating with my police departments on disarmament.

But my concern is that we do have an opportunity to enhance the ability of both the system and the victims in how to deal with this. There is some opportunity for a Federal role there. Whether or not HHS or the Department of Justice ought to get into writing model statutes for states with respect to the issues of self-defense, I think is a relevant question. At least, it seems to me that we ought to make some attempt at trying to have the Federal Government lead the way in the establishment of procedures for handling these cases.

It does not appear that this is a minor part of the court's docket. This is a major workload within the justice system and certainly within the police system. As we have heard testified, a good portion of police officers who are either killed or injured on a yearly basis are responding to domestic quarrels. There is a lot of motivation here, it would seem to me, to start to get a system that can respond.

I know when I have ridden with police officers in different jurisdictions, their biggest complaint is they very few tools. I think that is one of the reasons we see them excited about getting a shelter. At least when they go to the address, they now have one more option. They may be able to say to them, "If you would like to pack your bags and your children, I will take you to the shelter."

It is another tool that they have at their disposal, but right now, again those are all exceptions to the rule. I mean, all of these programs are exceptions in terms of the number of jurisdictions and the kinds of communities that suffer this.

I hate to admit that this may not be the last hearing because I like to think that we could have some kind of a lasting impact. I want to thank you for your testimony because I think, in all of the suggestions—and they have ranged from the changes within the law in terms of how the justice system deals with this, as Mr. Ewing has suggested, and Ms. Walker, to the questions of training and providing some kind of support services for the people who deal in this, whether they are the prosecuting attorney or the police officers. How do we deal with this? The term "epidemic" was used here earlier, and clearly, it is one. We see in all of our other work on the Select Committee on Children and Families very little evidence that there is any, any opportunity at this point to diminish what we have come to call "family violence." We are just into management at this point. We are not into prevention. We are not into any of the things that we would like to see in terms of diminishing this violence, especially when you see that the victims clearly are women and children and you have a system that cannot respond, or will not respond to that.

I would just like to thank you very much and would ask for your help, because I think maybe we have to sit down outside of the hearing room here and think about what kind of approach the Federal Government could take to be a catalyst, if you will, it is in large part an area of state law. But I think there is a federal role. We have done this before. We have seen successful efforts and where we have engaged in comprehensive training programs, we have seen good results in getting people to understand some of these problems. But this one is just out of control at this point. I think it has to be given some Federal attention. It is not being done currently at this level.

Thank you very much, and again, my thanks to all of the witnesses who testified this morning.

A couple of things, just for the record. I think, in one of the previous testimonies we had of Mr. Sears, we had a study that was submitted on behalf of a Mr. Weaver. I think we do not have the whole study and I would just like the staff to find out if we can get the entire study. I think we have the conclusions for that purpose.

["Effects of Portrayals of Female Sexuality and Violence Against Women on Perceptions of Women." Complete article is retained in committee files.]

Secondly, I will submit for the record the ACLU comments on Section 2 of the Attorney General's report just for the record so that people can have both sides of that argument.

Polluting the Censorship Debate

A Summary and Critique of the Final Report of the Attorney General's Commission on Pornography

ACLU
AMERICAN CIVIL LIBERTIES UNION

Public Policy Report

July 1986

Chapter 2: The History of Pornography

Summary of Attorney General's Report

(2.1) Pornography as Social Phenomenon

Descriptions of sex, including comparatively explicit sexual references for entertainment or arousal are not recent phenomena, but are found in cultural records of ancient Greece and Rome, as well as Eastern cultures. However, "regulation of sexually explicit material is a comparatively recent phenomenon." This is in part because "until the last several hundred years, almost all written, drawn, or printed material was restricted largely to a small segment of the population that undoubtedly constituted the social elite."

(2.2) Regulation and the Role of Religion

The earliest enforcement efforts "were directed not against descriptions or depictions of sex itself, but only against such depictions when combined with attacks on religion or religious authorities." Heresy, blasphemy, treason, and sedition were severely sanctioned, but not sexually explicit portrayals alone. In England, sexuality itself was not a matter of governmental concern until 1663 when Sir Charles Sedley was convicted of indecent conduct after he took off his clothes, uttered profane remarks, and poured urine on a crowd. Even following this case, there was great reluctance to involve the legal system with publishing of sexually explicit materials, although occasional prosecutions occurred.

(2.3) Obscenity Law -- The Modern History

In the early 1800s in England such private groups as the Society for the Suppression of Vice launched campaigns against explicit material. The development of printing meant that this material became more available to the masses: "Thus, the kinds of sexually explicit material that had circulated relatively freely in England among the elite during the eighteenth century and earlier now became more readily available to everyone." When the audience was more "broad-based," the "material itself became not necessarily more explicit, but certainly briefer, simpler, and more straightforward."

These private groups were legally able to commence their own criminal prosecutions, and by the 1860s there were many prosecutions for "obscene libel" for distributing works viewed as immoral. These groups became more active with the development of photography which "not only increased the impact of the materials, and therefore the offensiveness to many of the materials, but also increased their accessibility" to illiterates.

In America, the first conviction for the common law crime of "obscene libel" occurred in 1815 in Pennsylvania, and Vermont passed the first anti-obscenity statute about 1822. Most of the subsequent enforcement efforts came from private organizations like Anthony Comstock's New York Society for the Suppression of Vice, created in 1873. Comstock's energies were devoted primarily to sexually explicit publications, particularly such magazines as _The National Police Gazette_, which were "comparatively unimportant works." He was a specially appointed agent of the Post Office Department, once enthusiastically declaring "I have destroyed 160 tons of obscene literature." The efforts of Comstock and others made the market for this material "almost exclusively clandestine." In the first half of this century, prosecutions occurred against such works as _Lady Chatterley's Lover_, James Joyce's _Ulysses_, and _Esquire_ magazine. When such works of obvious literary and artistic merit were in court, production and distribution of pornographic films, pictures and magazines was necessarily done "in a highly surreptitious fashion."

So, until the late 1950s, there were visible prosecutions of books and films with substantial merit directed at the general audience as well as some against the more secretly distributed and more explicit material: "It was not until the early 1960s, when the Supreme Court began actively to scrutinize the content of materials found to be obscene, that attempted prosecutions of unquestionably serious works largely withered, and that most of the legal battles concerned the kinds of material more commonly taken to be pornographic."

The Supreme Court's 1957 opinion in _Roth v. United States_[1] took the First Amendment "to limit the particular works that could be found obscene." In 1966, in _Memoirs v. Massachusetts_,[2] the Court held that material could be restricted only if it was "utterly without redeeming social value," a stringent standard which made successful prosecution "extraordinarily difficult." This resulted in a phase of "essentially dormant" prosecutions, coupled with "a consequent proliferation of the open availability of quite explicit materials." This trend was buttressed by the 1970 Commission's recommendation against restrictions of material for consenting adults. The Report, even though repudiated by President Nixon and a majority in Congress, "reinforced the tendency to withdraw legal restrictions in practice, which in turn was one of the factors contributing from the late 1960s onward to the volume and explicitness of materials that were widely available."

Supreme Court decisions in 1973 like _Miller v. California_,[3] however, reversed the "utterly without redeeming social value" standard, by "making it clear once again that the First Amendment did not protect anything and everything that might be sold to or viewed by a consenting adult, tended to recreate the environment in which obscenity regulation was a practical possibility." Since then, the level of regulation has varied widely throughout the nation.

ACLU Response

This entire chapter is a fairly straightforward and nonargumentative history of the regulation of sexually explicit materials. It is useful to highlight several features, however.

First, there was no legal construct of "obscenity" until the development of the printing press, and later, photography, provided mass-produced materials for the general populaces. As long as sexual literature existed only for the elites, there was little interest in suppressing it. Routinely in the history of censorship, so long as the material did not reach the hands of the masses there was a sense that it was not damaging. The wealthy and elite were able to deal with it responsibly; the common folk were not.

Second, the brief history of Anthony Comstock is illustrative of the very close connection that may develop between a private group and a governmental agency (Comstock was a specially-appointed postal inspector while leading the New York Society for the Suppression of Vice). Later in the report, the Commission embraces a system of private condemnation and civil actions, undertaken in close connection with law enforcement efforts, which smack of Comstock's return.

Third, as in so many other sections of the Report, the Commission seeks to explain the growth of pornography by external forces: court decisions and the 1970 Report, for example. There is little acknowledgement that some (or even a great deal) of the expansion of availability of sexual materials has to do with inherent interest in sex. The 1970 Commission concluded that much of the reason sexually explicit material caused so much controversy was the "inability or reluctance of people in our society to be open and direct in dealing with sexual matters."[4] Although we are far from a sexually enlightened society today, our greater openness about sex should be viewed as a reasonable explanation for much of the growth in sexually explicit materials.

Specific Supreme Court "tests" for obscenity are accurately described, and the ACLU criticism of these are located in the following section.

Chapter 8: The Role of Private Action

Summary of Attorney General's Report

(8.1) The Right to Condemn and the Right to Speak

Citizens have every right to condemn a wide variety of material that is protected, and properly so, by the First Amendment. Even where governmental action would be unwise or unconstitutional, some forms of communication may not be valuable and our society might be better off without them. In fact, the First Amendment clearly entitles persons to condemn the acts of government and other matters which concern them, including sexually explicit material. Citizens should also recognize that "in many aspects of our lives to keep quiet is to approve."

ACLU Response

Obviously, the ACLU would be the first group to defend vigorously the right of American citizens to protest that which they detest and to petition their government to change policies and practices they think wrong.

However, just as the Report notes that some forms of communication the government cannot regulate are nevertheless not valuable and would improve society by their absence, some forms of protest are unwise and deleterious to other values like diversity and privacy. The conclusion of this section notes that "to keep quiet is to approve." In fact, that is often not the case. To keep quiet may represent simply a tolerance for the rights of others who wish to see or do things which are different from those of the potential "protester."

Summary of Attorney General's Report

(8.2) The Methods of Protest

Protest may include the formation of organizations to articulate a particular viewpoint, and picketing, marching, or demonstrating to attract attention and try to persuade others of their views. For citizens to protest near establishments which sell material they consider dangerous, offensive, or immoral is

also "fully within the free speech traditions of this country" and remains so even if such protest discourages patrons who would otherwise enter those establishments. "If people feel that businesses, whether a local store or a multinational corporation, are behaving inappropriately, it is their right and their obligation to make those views known." Consumer boycotts, including urging of others not to patronize specific stores to mobilize consumer power for social and political aims, is also constitutionally protected action.

ACLU Response

There is no question that picketing, marching, demonstrating and even boycotting are all solidly "within the free speech traditions of this country." There is, however, always the question of the wisdom of such actions. These tactics are unwise if directed at removing literature from the shelves of stores or libraries, or films from theaters. It is one thing to urge that persons not read a particular magazine or see a particular movie; it is another when the goal is solely to make it difficult or impossible for those who do not accept the message of the protester to obtain that material.

Summary of Attorney General's Report

(8.3) The Risks of Excess

It would be naive to ignore that the right to protest "may often be carried to excess." Citizens could urge refusal to shop at stores that carry National Review or The New Republic because of political disagreements, but we also have no doubt that the citizen who exercises his First Amendment rights in this manner could be criticized by most people, and most of us would strongly support that criticism." This is because "there are positive values associated with the free flow of ideas and information, and society is the loser when that process is unduly stifled." Protest can be directed in "societally harmful" ways: "If large numbers of people refused to patronize bookstores that sold Sinclair Lewis's Elmer Gantry because it dealt with sexual immorality by a minister, or if people picketed the residences of booksellers who sold James Joyce's Ulysses because of its sexual themes and language, this society would, quite simply, be the worse for it." This excess is a "real fear" and there is "no solution to this dilemma." Therefore, the Commission can only "encourage people to object to the objectionable, but we think it even more important that they tolerate the tolerable."

ACLU Response

In this section, the arrogance of the Commission perhaps reaches its highest level. It bemoans the possibility of "socially harmful" protest, using as a prime illustration the picketing of a bookseller trafficking in Ulysses. Our society, it notes, would "be the worse" for such conduct. Nevertheless, it celebrates precisely the same activities if directed at a convenience store which hawks Playboy or Penthouse from behind the counter. As long as the work is accessible only to the scholarly elite, it is wrong to protest it; but when the average person might be able to see it, then it should be driven from the community.

Summary of Attorney General's Report

(8.4) The Importance of Education and Discussion

Positive educational efforts are "the real solution to the problem of pornography." Just as "images can cause certain forms of behavior . . . images ought as well to be able to prevent behavior, or cause different behavior." These positive efforts to communicate viewpoints which are contrary to those in much pornography can come from many sources, since "[U]ltimately, a significant part of the concern with pornography is a concern about negative messages." Elimination of harmful messages will not be finally successful unless accompanied by positive efforts. Moreover, many behaviors cannot, and should not, be regulated by laws alone. A "foundation of values is the glue that holds a democracy . . . together" and that is often derived from deeply held moral, ethical, and spiritual commitments.

ACLU Response

Here, finally is a breath of genuine First Amendment thinking. The ultimate solution to any perceived problem of "bad speech" is indeed the creation of alternative, affirmative images to counteract those felt to be negative. It is unfortunate that this approach is really not that taken by the Commission. They have stemmed the possibility of any real marketplace of sexual ideas and images from emerging, by having governmental regulation and criminalization link arms with moral mob rule to change "appetites" by coercion, not choice.

Summary of Attorney General's Report

(Additional Data) Suggestions for Citizen and Community Action

"If enforcement mechanisms appear inadequate or ineffective, if legislative change is necessary to enhance the effectiveness of the criminal justice system, or if the value of pornography or offensive material is a particular problem in the community, citizens should consider developing a community action program." It is also clear that "citizen groups may wish to focus on materials which are not legally obscene and which are constitutionally protected from government regulation." These "suggestions" are for those who wish to form or support a citizen action group:

> (1) Establish and maintain effective community action organizations.
>
> (2) Such groups can solicit support from a broad spectrum of civic leaders and organizations.
>
> (3) Such groups can gather information on pornography in their communities. Citizens should familiarize themselves with pertinent legal decisions governing the control of obscene material. Then, citizens should survey "adults only" theaters and pornographic outlets, as well as retail magazine outlets, video cassette retailers, cable satellite and subscription television outlets, dial-a-porn, hotels (which provide sexually explicit and sexually violent movies), and computer services. Information should be gathered regarding obscene as well as sexually explicit or sexually violent materials. The proper officials should be contacted with regard to possible obscenity violations.
>
> (4) Groups can educate the public about the effect pornography has on their community.
>
> (5) Groups can communicate with enforcement officials and prosecutors about the pornography in their jurisdiction and alert them to obscenity and unlawful sexual activities. Police, local prosecutors, and federal officials should be queried about the level of obscenity law enforcement activities, the priority given these actions, and how they judge "community standards."

(6) Citizens can file appropriate complaints with the F.C.C. about obscene broadcasts.

(7) Groups could conduct a "court watch" program. Members can sit through judicial proceedings and then relay their thoughts to the involved law enforcement officials, the judge, the media and legislators, and "publicly disseminate the information they have gathered when officials come up for re-appointment or re-election."

(8) Groups could lobby for legislative changes in obscenity laws, including those which reflect Commission recommendations.

(9) Groups can provide assistance and support to officials in the performance of their duties, including petition drives and electoral support.

(10) Citizens can use grassroots efforts to express opposition to pornographic materials to which they object even if not obscene. Measures include picketing and store boycotts, and protests to cable companies or broadcast sponsors regarding offensive programming. There is a constitutional right to boycott for political purposes, although "citizens exercising these practices should be sensitive to the competing rights of others who adopt an opposing viewpoint."

(11) Citizens can exercise their economic power by patronizing businesses which demonstrate responsible judgment in the types of materials they offer. Moreover, "[B]usinesses which elect not to produce or distribute pornography in an effort to uphold or reinforce community standards should be commended."

(12) Parents should monitor the music their children listen to and the recording industry should use discretion in the fare offered. The Commission believes that some album covers appear to meet the legal standard for obscenity. In addition, it endorses the November 1985 agreement between the Parents Music Resource Center and the Recording Industry Association of America in which albums containing explicit sex, violence, drug or alcohol abuse are either labeled with the words "explicit language" or "parental advisory" or have the actual language printed on the album jackets.

(13) Taxpayer-funded institutions (schools, hospitals, prisons, military installations, etc.) should prohibit the production, trafficking, distribution, or display of pornography on their premises to the extent constitutionally permissible.

(14) Businesses, as "corporate citizens," can support community efforts to control pornography. For example,

printers, warehouse operators, and credit card companies can scrutinize their involvements to insure "they are not being unknowingly used as an instrument for the spread of obscene or pornographic material which the community has requested not be produced or sold on moral, social or other legitimate grounds." Responsible companies can also establish and participate in pornography "victim" assistance programs.

ACLU Response

In previous drafts, these "suggestions" were labeled "recommendations." When several Commissioners objected to such strong language, indicating that it read like a "how-to-protest manual," the Chairman suggested that to indicate that these were simply methods of proceeding for those groups which had already decided to do so they should be called "guidelines" or "suggestions." As the old proverb goes: "A wink is as good as a nod to a dead horse." This is unmistakably a call to arms. The whole tenor of these "suggestions" is that they are to be utilized as ways to drive out of the community "offensive" materials which are non-obscene and thus constitutionally protected. As indicated above, this generally poses serious threats to the concept of free expression. In addition, the following suggestions raise specific new problems:

(5) The citizen groups are here encouraged to be general "vice vigilantes," not simply roaming through printed and visual materials but alerting the police to "unlawful sexual activities." Given the recommendation below for the government to stop "indecent" acts in "adults only" stores, this parallel could be read to suggest that private citizens seek to uncover these acts in their neighbors' bedrooms.

(7) When "court-watch" programs are closely linked to judicial reappointments and elections, there is considerable

danger that the right of defendents to a fair trial could be compromised. Obscenity law is technical and complex and what occurs in a courtroom may not be readily apparent to the occasional observer. Accusations that particular judges are "soft" could actually represent voting more sinister than a judicial officer's careful adherence to the law and the rights of defendants. Judges must do what the law and the Constitution require, not what well-intentioned or overzealous citizens demand.

(12) The ACLU objects to the so-called "voluntary agreement" between many music companies and the P.M.R.C. regarding record labeling. This agreement was reached only after members of a Senate committee, several of whom were spouses of the P.M.R.C. founders, threatened federal legislation if a "clean-up" of lyrics, or other action, did not occur "voluntarily." This was as serious an "official" intrusion into private decisions and negotiations as the Commission's letter to the 26 "identified distributors" of pornography.

In general, the ACLU does not approve of industry rating systems. We are concerned that they stifle creativity and result in rigid adherence to industry guidelines, wise or misguided. In the recording area, "labeled" records pose additional civil liberties problems. First, "labeled" records become easy targets for other citizens groups who can then demand that shopping mall stores or other outlets refuse to carry the product at all. Second, since renewals of broadcast licenses can still be challenged by citizen groups, there is the real concern that stations which play "labeled" (although clearly not obscene or even "indecent" materials) will be the targets of groups challenging their right to continue broadcasting. The could use the argument that other licensees in the market area uphold the "public interest" standard (required in the 1934 Communications Act) by not broadcasting from "labeled" albums.

Chairman Miller. Thank you very much.

The committee stands adjourned.

[Whereupon, at 1:10 p.m., the committee was adjourned, to reconvene subject to the call of the Chair.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF JAMES K. STEWART, DIRECTOR, NATIONAL INSTITUTE OF JUSTICE

Thank you Mr. Chairman. I am pleased to have the opportunity to review for the Select Committee on Children, Youth and Families the National Institute of Justice work on domestic violence. Families are the fundamental social unit of American life, and policies that support the family are imperative for the health and survival of our society. If we are committed to assisting families, we must seek out the means to combat the violence that arises between spouses in every community in America. As a nation, we have only recently begun to take special notice of the extent and pervasiveness of this kind of victimization. The evidence available is startling.

- In 1986, family members accounted for over 28% of all homicides where the victim-offender relationship was known; Approximately 2300 of these deaths were caused by spouse killing spouse; 62 percent of these victims of spousal homicide was female. (FBI, 1987)

- More than 2.3 million violent incidents between spouses or ex-spouses were reported to the National Crime Survey between 1973 and 1981. Twenty-five percent of these victims reported three or more incidents during a six-month period. (Klaus and Rand, 1984)

- Thirty percent of all married couples report at least one incident of violent abuse at some time during their relationship. Researchers estimate as many as 20 million victims of spouse assault among currently married couples. (Straus, Gelles, and Steinmetz, 1980)

- Among those incidents classified as crimes, assaults among family members are typically the single most frequent call to American police departments. (Scott, 1981)

The true size of this problem, of course, is not accurately known. The social stigma attached to families with abusive partners and the fear of repeated or even more violent abuse are strong motivations not to report violent incidents to friends of family members, let alone to the police, mental health agencies, or survey researchers. The best information on spouse abuse obtained from a nationally representative survey of currently married couples does not include the thirty-five percent of the sample that refused to be interviewed.

Whatever the actual level of violence between spouses, the recorded incidents reflect some unknown fraction of a truly serious national problem with potentially grave consequences for the very future of American society.

The Police Response

Law enforcement agencies are usually the first and often the only public agency called upon to intervene in violence disputes among family members. How the police respond in these situations is critical for the immediate needs of the victims and the long-term prospects for preventing repeated incidents. In a study of family homicides in Kansas City and Detroit, the police had previously been called to the scene at least once in 85 percent of the cases. In 50 percent of the family homicides the police had been called at least 5 times. These statistics argue that the potential for preventing family homicide is great.

The police response to spouse assault has traditionally been one of three approaches: advise the couple, order one of the parties out of the house for several hours, or arrest the attacker. Advocates of each of these tactics have over the years maintained that their approach is more likely to reduce the subsequent violence to the victim or at least not precipitate additional violence. Until recently, however, there has been no systematic evidence to support one approach over another.

This situation changed dramatically in 1983 when a controlled experiment sponsored by the National Institute of Justice reported that one police strategy is more effective in reducing the amount of repeat violence between spouses. The Minneapolis Domestic Violence Experiment found that arrest was the best response in misdemeanant assault cases. In response to these findings and the subsequent national publicity surrounding them, police agencies in several jurisdictions (including Minneapolis, New York, and Houston) altered their official policies regarding spouse assault. In 1983 only 10 percent of the police departments in jurisdictions over 100,00 population had a policy favoring arrest; by 1986, 50 percent of the same departments had a pro-arrest policy.

In addition, legislatures in several states and local jurisdictions have revised their laws to encourage the increased use of arresting these situations, and the Attorney General's Task Force on Family Violence relied heavily on these results in its recommendations to the nation that arrest become the preferred policy in dealing with domestic violence.

Working together police and researchers in Minneapolis successfully implemented a complex experiment, the results of which have had immediate and practical consequences throughout the U.S. Research, in this instance, addressed a real need of police policy makers. These policy makers were ready and able to act when persuasive evidence in favor of one treatment over another was made available. This demonstrates once again that the relationship between the police and the research community can be the highly productive one that the Congress envisioned when it created the National Institute of Justice.

Although the findings from Minnesota are currently the best available evidence on how the police should respond to spouse assaults, these findings must still be considered tentative until additional research (and practical experience) can establish the full range of conditions under which the arrest response is most effective. The National Institute of Justice is testing the effectiveness of arrest for spouse assault in six jurisdictions: Omaha, Nebraska; Milwaukee, Wisconsin; Colorado Springs, Colorado; Charlotte, North Carolina; Atlanta, Georgia; and Dade County, Florida.

Since the publication of the results of the Minneapolis project in 1983, the Institute has spent a cumulative total of $1.8 million on domestic violence. The need for field work is extensive and conducting research in this area is extremely expensive, costing nearly $225,000 per replication site. With the $1 million allotted for domestic violence in FY 88, studies in four-five replication sites will be undertaken. NIJ has made a substantial investment in the area of domestic violence, but as is the Institute's goal and responsibility, research in this area must be sustained. One can see the rapid exhaustion of funds with a research project as important as domestic violence.

These projects are designed to improve our knowledge of how the police can effectively handle these situations, and to expand our ability to reduce the violence that threatens our most cherished institution. This program challenges the police and the research communities to devise improved tests of alternative responses to spouse assault. The Institute is confident that pursuing this line of cooperative research will lead us to a better understanding of what the police can do to reduce the amount of violence in our homes.

HON. DAN COATS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF INDIANA, AND RANKING MINORITY MEMBER

WOMEN, VIOLENCE AND THE LAW—MINORITY FACT SHEET

I. DOMESTIC VIOLENCE

A. Definition and incidence

Estimates of the incidence of domestic violence in the U.S. vary widely depending upon the definition of domestic violence and the method used to arrive at estimates.

"Estimates of the level of domestic violence vary depending on how spouse abuse is defined. For example, data bases on a definition that includes punching as a form of abuse but not pushing will differ from data based on a definition that includes both punching and pushing. Because there are many interpretations of domestic violence, there is a large gray area ranging from 'normal' fighting to battering that is subject to debate." (Shillmoeller, Susan, "Spouse Abuse: Background and Federal Programs to Address the Problem," CRS Report, December 10, 1986.)

There is no consensus on the severity of violence required for an act to be considered "abuse." The term "abuse" is a source of considerable difficulty and confusion because it covers many types of abuse. (Straus, Murray and Gelles, Richard, "Societal Change and Change in Family Violence from 1975 to 1985 as Revealed by Two National Surveys," Journal of Marriage and the Family, August 1986.)

Gelles and Cornell found that most researchers view spouse abuse as physical abuse, with the intent to cause harm. Also, many researchers agree that the problems of spouse abuse are predominantly those of wife abuse. Although some research suggests that wives may be as violent as husbands, many researchers make distinctions between husband abuse and wife abuse. (id.)

In addition, domestic violence is not usually defined to include only those couples who are currently married.

National Crime Statistics show that in almost ¾'s of spouse-on-spouse assaults, the victim was divorced or separated at the time of the incidents. (Reports to the Nation on Crime and Justice, October 1983, pg. 21.)

Researchers found that almost half of the battered women requesting emergency medical assistance in a large metropolitan hospital were divorced or separated from the abuser. Based on this finding, they estimate that as many as 2 of the 6 million women in the United States who are separated or divorced are at risk for battering. When this figure is combined with Straus, Gelles, and Steinmatz' (1980) estimate that approximately 1.8 million women living in couples are battered, it can be estimated that 3 to 4 million women are beaten in their homes each year by their husbands, ex-husbands, boyfriends, or lover. (Stark, Evan, "Wife Abuse in the Medical Setting: An Introduction for Health Personnel," April 1981, page vii)

In spite of the wide variation in definitions and estimates of incidence of domestic violence, certain unambiguous facts make clear the seriousness of the problem and the need for an effective response from the justice system. The Attorney General's Task Force on Family Violence found:

Battery is a major cause of injury to women in America.

Nearly one-third of female homicide victims are killed by their husbands and boyfriends.

Almost 20% of all homicides in the U.S. occur among family members.

In one city, police had been called at least once before in 85% of spouse assault and homicide cases.

In 50% of these cases the police has responded five times to family violence incidents prior to the homicide.

B. The criminal justice system response

All states have enacted legislation designed to protect battered women. Laws in 43 states now enable battered women to obtain civil protection orders without initiating divorce or other civil proceedings, as previously required. Eleven states have enacted legislation making spouse abuse a criminal offense separate from other types of criminal offenses. Thirty-three states have expanded police power to arrest in domestic abuse cases, and 29 states have appropriated funds for services for families suffering from violence. (Lerman, Lisa and Livingston, France, "State Legislation on Domestic Violence," September/October 1983.)

Current research indicates that police should re-evaluate their common practice of temporarily separating husbands and wives following a violent incident. A recent study conducted by the Police Foundation found that offenders who were asked to temporarily leave the residence were 2½ times more likely to generate another police report than offenders who were arrested for their violence. (Sherman, L. and Berts, R., "Police Responses to Domestic Assaults: Preliminary Findings," 1983.)

A survey of 1,793 women in Kentucky, who were married or living with a male partner, found that police were called in only 9% of domestic violence incidents. Researchers conclude that police are notified in less than 1 in 10 cases of spousal violence. Incidents involving nonwhite women are more than twice as likely to be reported to the police as incidents involving white women, 18% to 8%. (Schulman, Mark, "A Survey of Spousal Abuse Against Women in Kentucky," U.S. Department of Justice, July 1979.)

Over half (200) of 350 battered women completing a research survey reported that the police responded on at least one occasion of battering. Fifty-six percent of these women (112) said they asked to have their spouses arrested. In the majority of these cases, the officers refused to arrest the assaulter. It is difficult to realize that, out of 350 survey respondents beaten by their spouses, including 200 cases in which the police were involved one or more times, not one claimed that her spouse was arrested, tried, found guilty, and sentenced to jail on a charge of assault and battery. (Pagelow, Mildred, "Double Victimization of Battered Women: Victimized by Spouses and the Legal System," November 8, 1980.)

C. Federal efforts

Because domestic violence is very much a problem of the local community and law enforcement agencies, the federal government has been only marginally involved in responses to it. And, ironically, though shelters for battered women are simply a measure of last resort rather than a solution to domestic violence, most federal involvement has consisted of funding for shelters.

Between 1973 and 1982, there were five small Federal programs specifically aimed at domestic violence or which provided for support for shelters. These programs were abolished by late 1982. Until it was phased out, the Comprehensive Employment and Training Act (CETA) was a major source of Federal support for domestic violence shelters. (Schillmoeller, Susan, "Spouse Abuse: Background and Federal Programs to Address the Problem," CRS Report, December 10, 1986.

Currently, federal funding for shelters comes through:

Family Violence Prevention and Services Act of 1984 (title III, P.L. 98-457).—Authorizes State demonstration grants to provide shelters and related services, authorizes training and technical assistance grants for law enforcement agencies, and establishes a National Clearinghouse on Family Violence Prevention. Authorizes $11 million for FY85 and $26 million for each of FY86 and FY87.

Community services block grant.—Administered by the Office of Community Services within DHHS, provides funds to States for antipoverty activities. Of the 37 States that provided data to the National Association of State Community Services Programs survey regarding FY84, the NASCSP found that $19.1 million, or 14.2 percent of the total CSBG expenditures for the 37 States, was used for emergency services. Emergency services include domestic violence and other crisis intervention services, but also covers assistance unrelated to domestic violence.

Community development block grant.—Administered by HUD, the CDBG provides grants to States and communities for a wide variety of community and economic development activities. A shelter may apply for funds to acquire property, or to acquire or rehabilitate housing. CDBG funds may also be used for the provision of counseling services to abused spouses. According to HUD, 1980 was the last year for which it had information on how CDBG supports shelters. Through FY 1980, 521 shelters used CDBG funds to acquire buildings, for a total of about $3.56 million. In FY87, $3.0 billion was appropriated for CDBG for all uses under P.L. 99-500.

Social services block grant.—The SSBG (title XX of the Social Security Act) authorizes block grants to States for a variety of social services. States determine what services they will provide and who will be eligible for services. States receive funds on the basis of the State's population. There are no State matching requirements.

Victims of Crime Act of 1984.—Authorizes a crime victims fund to compensate and assist victims. The fund is made up of fines collected from persons convicted of certain Federal offenses. Up to $110 million from this fund is to be used for awards to, among other things, crime victim assistance programs. Priority for crime victim assistance awards is to be given to those programs providing assistance to victims of sexual assault, spouse abuse, or child abuse. Eligible services provided by crime victim assistance programs are crisis intervention services, including a telephone hotline; temporary shelter and other emergency services; support services, including follow-up counseling; court-related services, including transportation, child care and escort services; and payment for forensic medical exams.

D. Recommendations of the Attorney General's Task Force on Family Violence

In September of 1984, the Attorney General's Task Force on Family Violence concluded its extensive study with recommendations for every level of government and some non-government entities. Most prominent were its recommendations for the criminal justice system. Those most pertinent to this hearing are as follows:

Recommendations for the justice system

1. Family violence should be recognized and responded to as a criminal activity.
2. Law enforcement officials, prosecutors, and judges should develop a coordinated response to family violence.
3. Communities should develop a multi-diciplinary team to investigate, process and treat all incidents of family violence, especially cases of physical and sexual abuse of children.

Recommendations for law enforcement

1. All law enforcement agencies should publish operational procedures that establish family violence as a priority response and require officers to file written reports on all incidents.
2. Consistent with state law, the chief executive of every law enforcement agency should establish arrest as the preferred response in cases of family violence.
3. Law enforcement officials should maintain a current file of all protection orders valid in their jurisdiction.
4. Law enforcement officers should respond without delay to calls involving violations of protecting orders.
5. Forms for obtaining protection orders should be available at all police stations and sheriffs' offices.
6. When responding to disturbance calls, law enforcement officers should document violations of pre-trial release conditions. The report should verify the facts and circumstances necessary for the prosecutor to request revocation of the release.

Recommendations for prosecutors

1. Prosecutors should organize special units to process family violence cases and wherever possible should use vertical prosecution.
2. The victim should not be required to sign a formal complaint against the abuser before the prosecutor files charges, unless mandated by state law.
3. Whenever possible, prosecutors should not require family violence victims to testify at the preliminary hearing.
4. If the defendant does not remain in custody and when it is consistent with the needs of the victim, the prosecutor should request the judge to issue an order restricting the defendant's access to the victim as a condition of setting bail or releasing the assailant on his own recognizance. If the condition is violated, swift and sure enforcement of the order and revocation of release are required.

Recommendations for judges

1. A wide range of dispositional alternatives should be considered in cases of family violence. In all cases, prior sentencing, judges should carefully review and consider the consequences of the crime on the victim.
2. Protection orders should be available on an emergency basis in family violence cases.
3. Judges should establish guidelines for expeditious handling of family violence cases.
4. Judges should admit hearsay statements of family.
5. Expert witnesses should be allowed to testify in family violence cases to familiarize the judge and jury with the dynamics of violence within the family.
6. In granting bail or releasing the assailant on his own recognizance, the judge should impose conditions that restrict the defendant's access to the victim and strictly enforce the order.

Recommendations for State legislative action

1. States should enact laws to extend the statute of limitations in criminal cases of child sexual assault.
2. States should enact laws to permit law enforcement officers to make warrantless arrests for misdemeanor offenses involving family violence when the officer has probable cause to believe a crime has occurred and the safety of the family is in jeopardy.
3. States should enact legislation making the violation of a protection order issued in a family violence case a criminal offense.

4. States should enact legislation that permits overnight incarceration of persons arrested for incidents of family violence in appropriate cases.

5. States should enact legislation to enable businesses and organizations to have access to sexual assault, child molestation or pornography arrest on conviction records of job applicants whose work will bring them in regular contact with children.

6. States should enact laws to require professionals currently required to report child abuse, to report elder abuse.

7. States should enact laws that allow victim compensation to be paid to victims of family violence.

Recommendation for pornography

1. The Task Force endorses the creation of the National Commission on Pornography.

II. PORNOGRAPHY

A. Presidential Commissions on Pornography

The 1970 Presidential Commission on Obscenity and Pornography.—In 1970 the Johnson administration appointed this Commission to look into the subject of pornography. There is considerable controversy surrounding this Commission, some saying that it consisted of "liberals", and the two most prominent researchers at the time where not included. Many of the studies were rushed to completion, including the widely cited "Danish Studies" which alleged that there had been a reduction in sex crimes in Denmark with the legalization of pornography in 1967. This study was later refuted. ("Family Policy Insights," Free Congress Foundation, 1985.)

The Commission concluded that pornography was harmless and even had therapeutic and cathartic value, nad no negative effects on adults or children, was not a social problem, and its production and distribution should be free of regulation. The Report advocated the use of pornography as a way to inhibit and help rehabilitate sex offenders, who after viewing the material would supposedly experience and emotional "catharsis" which would deter them from committing later offenses. (id.)

The Commission Report was rejected by the Senate with a vote of 60–5, and by President Nixon. Even so, sympathetic media reports caused widespread acceptance of the Report by the public. This gave virtually free reign to producers, programmers, and advertisers of pornographic materials, and as a result there has been a tremendous increase in these materials in the last 10 to 20 years. (id.)

The Attorney General's Commission on Pornography.—The Meese Commission in 1986 came out with a report which came to very different conclusions. The Commission did not accept the 1970 conclusion that pornography had no negative effects. The "catharsis" model was also not accepted. In fact, the Commission found the contrary to be the case. There was a high correlation between acceptance of the "rape myth" and sexual violence in pornography. Moreover, the Commission found that sexually violent pornography increases the likelihood of adverse attitudinal changes. Nonviolent pornography had less clear an impact, but similar trends are seen, especially with degrading themes. (Report of the Attorney General's Commission on Pornography, 1986.)

B. Violent pornography and violence against women

Several studies have been conducted regarding the effects of violent pornography (includes violent erotica, sadomasochistic themes, bestiality, and portrayals of rape, especially portrayals where the female victim becomes involuntarily sexually aroused or otherwise responds positively to sexual aggression). The results of a study conducted by Neal Malamuth at the University of Manitoba indicated that exposure to the films portraying violent sexuality significantly increased male subjects' acceptance of interpersonal violence against women. Malamuth concluded that (1) these materials stimulate and arouse aggressive and sexual feelings—especially in males; (2) these materials show or instruct in detail how to do the acts—much of it anti-social; (3) they have a desensitization effect which reduces feelings of conscience, guilt, inhibitions, or inner controls—the act is legitimized by repetition; and (4) there is increased likelihood that the individual will act out what he has witnessed. (Cline, Victor, "Aggression Against Women: The Facilitating Effects of Media Violence and Erotica," 1983.)

In another study, Drs. Edward Donnerstein and Neil Malamuth found that exposure to these materials causes six results:

(1) it sexually excites and arouses the male viewer;
(2) it increases both his aggressive attitudes and behavior;
(3) it stimulates the production of aggressive rape fantasies;

(4) it increases men's acceptance of so called rape myths (such as women ask for it);

(5) it produces a lessened sensitivity and increased callousness about rape;

(6) it leads to men admitting an increased possibility of themselves raping someone—especially if they think they can get away with it. (id.)

C. Nonviolent pornography and violence against women

The effects of nonviolent pornography (includes fellatio, cunnilingus, coition, anal intercourse, and multiple partnership) are more disputed. According to Dr. Dolf Zillman, soft-core porn is a serious problem also, leading to increasing callousness towards women, and to trivialization of rape as a criminal offense. Zillman and Dr. Jennings Bryant found that many people do not stop with the more conventional, non-violent pornography. After a time, boredom sets in, and they are more likely to shift to violent and bizarre kinds. Zillman and Bryant also believe that exposure to pornography make viewers more tolerant of such moral transgressions as adultery, and less satisfied with their current sexual relationships. (Donnelly, Harrison, "Pornography: Setting New Limits," Editorial Research Reports, May 1986.)

"Subjects, in fact, reported becoming dissatisfied with the pornographic material they had become familiar with. To recreate their earlier state of sexual arousal, they developed an appetite for material featuring less common sexual behavior. Massive exposure to nonviolent, noncoercive standard-fare pornography created an appetitive for more unusual, bizarre and deviant materials, including violence in a sexual context—such as depiction of sadomasochism and rape." ("Pornography and its Effects on Family, Community, and Culture," Family Policy Insights, Free Congress Foundation, 1985.)

In a 1982 study of nonviolent pornography, Zillman had the following results:

Students in the study perceived the use of particular sexual practices to be more pronounced than did students who had viewed less or no pornography; visions of hypersexuality seemed to be created.

"The popularity of unusual sexual practices was in fact grossly overestimated. Massive exposure to pornography consequently might be said to distort the perception of many aspects of sexuality by fostering the lasting impression that relatively uncommon sexual practices are more common than they actually are. Interestingly, this perceptual shift from uncommon to common is the result of massive exposure to erotica featuring rather common practices. It can only be speculated, at this point, that massive exposure to materials exhibiting sadomasochism and bestiality would have produced an even stronger distortion in the perception of the popularity of these behaviors."

Pornography was considered less offensive and objectionable by those who had been most exposed by it.

Concern about the ill effects of pornography was diminished by repeated exposure.

Dispositions toward rape, as measured by the incarceration recommendations for rapists, resulted in significantly shorter terms of imprisonment. Exposure to pornography made rape appear a trivial offense.

There was a loss of compassion for women as rape victims.

Men's sexual callousness towards women was significantly increased.

Dr. Zillman asserts that there are further consequences that would occur outside the laboratory:

". . . the findings are suggestive of further anti-social consequences. It can be extrapolated from the data on perceptual changes, for instance, that those massively exposed to pornography will become distrusting of their partners in extended relationships. If women were thought to be as socially non-discriminating and as hysterical about any type of sexual stimulation as pornography makes them appear, men massively exposed to pornography might come to fear being cheated on and to invest less in a relationship than men who had viewed less pornography. Needless to say, as distrust grows and caring diminishes, it is the thing called "love" that is being undermined." (Zillman, D. and Bryant, J., "Pornography, Sexual Callousness, and the Trivialization of Rape," Journal of Communication, Autumn 1982.)

D. Pornography and violence

"Seven out of a group of eighteen rapists studied who used "consenting" pornography to instigate a sexual offense, said that it provided a cue to elicit fantasies of forced sex. Similarly, ten of the eighteen who currently used "consenting" sex stimuli, used it to elicit rape fantasies." ("Pornography and its Effect on Family, Community and Culture," *Family Policy Insights,* Free Congress Foundation, 1985.)

Recent studies of habitual sex-offenders by Dr. William Marshall have shown that both rapists and heterosexual pedophiles use the different types of pornography that they collect for specific ritualized sex practices. In Dr. Marshall's most recent study, almost ½ of the rapists interviewed used so-called "soft-core" consenting sex pornography to arouse themselves in preparation for seeking out a victim. 86% of the rapists studied by Marshall currently use pornography. (id.)

Rapists display greater sexual arousal to forced sex scenarios than normal males. (id.)

"Sex-offenders and potential sex-offenders understand and interpret media portrayals of sexual psychopathology which is not punish, which is positively reinforced, and which is occasionally glorified—to convey a tolerance of these actual behaviors by society . . . sex-offenders claim society has betrayed them, when with one hand, it offers them a smorgasbord of these legitimizing images, and then with the other, punishes them when they act out the behaviors portrayed and depicted." (id.)

Police nationwide routinely report finding substantial pornography collections in the homes of virtually every pedophile, and virtually every serial and mass-killer that they apprehend and arrest. (id.)

In a recent FBI study of thirty-six serial-killers' sexual acts and interests, 29 rated pornography the highest, and incorporated it into their sexual activity, which included serial rape-murder. (Burgess, A., "Effect of Pornography on Women and Children," testimony before the Subcommittee on Juvenile Justice, Committee on the Judiciary, U.S. Senate, Washington, DC, 1984.)

Studies in Cleveland, Phoenix, and Los Angeles have verified that sex crimes are higher in those areas of a city where hard-core pornography is marketed. Statistics kept by the Michigan State Police prove that in at least 41% of sex crimes, pornography is used or imitated just prior to or during the violent acts. (Citizens for Decency through Law, Inc., "Effect of the Pornography Industry on the American Family and the Sexual Exploitation of Children," Memo to the Attorney General's Task Force on Family Violence, February 1984.)

E. Effects on male/female relationships and marriage

Zillman and Bryant have both found that massive exposure to soft-core or nonviolent pornography leads to sexual dissatisfaction in both men and women. Men and women, expecially men, tend to compare their partner's performance to the sexual behavior portrayed in pornographic materials. These people often become dissatisfied with the sexual performance, and even physical appearance of their partners. They also begin to devalue their partners in much the same way that they had the victims of rape in the laboratory. One reason is that the females portrayed in pornography are shown engaging in sexual behaviors which women generally do not want to, or will not engage in. ("Pornography and its Effects on Family, Community and Culture," Family Policy Insights, Free Congress Foundation, 1985.)

Sexual reality tends to fall short of depictions in pornography where socially nondiscrimination females encourage and solicit the specific sexual behaviors that are dear to men but not necessarily to women.

"Men may well feel cheated and accuse perfectly sensitive women of frigidity. Lacking corrective information, women might actually come to doubt their own sexual sensitivities. Regarding untried activities, pornography again projects euphoria where it might not exist—at least not for many. That pornography thus entices actions, and that the resultant experimentation leads to less than satisfactory results, can hardly be doubted. (Zillman, D. and Bryant, J., "Pornography, Sexual Callousness, and the Trivialization of Rape," Journal of Communication, Autumn 1982.)

In her book "Rape and Marriage," Diana Russell states that the "rape myth type of pornography was a significant element in reducing inhibitions to the use of violence in marital relationships, habituating both males and females to the idea of rape, and to the acceptance of sexual deviance as normal behavior. Repeated exposure to rape myth imagery contributed significantly to her subjects' reports of dissatisfaction in their sexual relationships with their spouses." ("Pornography and its Effects on Family, Community and Culture," Family Policy Insights, Free Congress Foundation, 1985.)

F. Pornography and the law

Congress has limited authority under the Constitution to legislate on obscenity. Legislative powers are reserved to the individual states, and most states have delegated some of this authority to lower governmental bodies such as countries and municipalities. However, there are two areas where the federal government has jurisdiction: (1) Congress has the power to regulate commerce with foreign Nations and among States, and (2) the establishment of "Post Offices and Post Roads" serves as the basis for prohibitions in the federal criminal code such as mailing obscene or crime-inciting matter, importation or transportation of obscene matter, mailing indecent matter in wrappers or envelopes, broadcasting indecent, profane or obscene language, and transportation of obscene matters for sale or distribution. (Reimer, Rita, "Legal Analysis of the Attorney General's Commission on Pornography's Final Report," CRS Report, July 1986.)

In addition, the Comprehensive Crime Control Act of 1984 added violations of various state and federal obscenity statutes to the listing of offenses encompassed by the federal Racketeer Influenced and Corrupt Organizations (RICO) law. This law imposes criminal penalties on those who acquire or conduct an "enterprise" engaged in or affecting interstate or foreign commerce through a "pattern of racketeer activity." This now includes all state and federal obscenity violations which carry a maximum sentence of at least one year's imprisonment. (id.)

The main criticism of the Meese Commission and of others is not the lack of laws, too-permissive statutes, but rather the lack of enforcement. For example, as of the duties when testimony was presented to the Commission, the cities of Miami, Florida, and Buffalo, New York and only one police officer each assigned to enforcement of obscenity laws. Chicago had two officers and Los Angeles had fewer than ten. From January 1, 1978 to February 27, 1986, a total of only 100 people were indicted for violations of federal obscenity laws. 71 were convicted. Thus, the Commission felt that stricter enforcement and strengthening of the present laws should be made a top priority. (id.)

III. RAPE

A. Statistics and key facts

Rape and attempted rape account for about 3% of all violent crimes. In 1983 an estimated 154,000 rapes and attempted rapes occurred, or roughly 1 for every 600 females 12 years of age and over ("The Crime of Rape," Bureau of Justice Statistics Bulletin, U.S. Department of Justice, 1985.)

The National Crime Survey estimates that during the 10-year period, 1973–82, there were about 1.5 million rapes or attempted rapes in the United States. This figure drastically understates the incidence of this crime.

Two-thirds of all rapes and rape attempts occur at night, with the largest proportion occurring between 6 p.m. and midnight. A third of the completed rapes occurred in the home. Only a fourth of the attempted rapes occurred in the home while over half the rest occurred on the street or in a park, field, playground, parking lot, or parking garage. (id.)

The highest victimization rates for rape and attempted rape were 16 to 24 year olds. Most victims of rape or attempted rape are white due to the racial composition of the general population. The likelihood of being a rape victim is significantly higher for black women than for white women. Victims are usually members of low-income families. (id.)

Assault by a total stranger is the most common. A woman is twice as likely to be attacked by a stranger as by someone she knows. More than three-fourths of all rapes involve one victim and one offender. (id.)

The offenders are likely to be the same race as their victims (70% of the time for white victims involving one offender and 89% for black victims involving one offender). (id.)

Most offenders are unarmed. Weapons were used in only 25% of the rapes and rape attempts. (id.)

In cases where the victim used some form of resistance, injury was somewhat more likely (57%) than in cases where she did not (47%). (id.)

There are at least one hundred times as many cases of actual rape which are not reported each year as there are false reports of rape. ("Rape and Women's Credibility," Harvard Women's Law Journal, Spring 1987.)

B. Characteristics of sex offenders

Sexual assaults of the offenders appeared to replicate their childhood victimization. Approximately 33% of the offenders who participated in a study conducted by Nicholas Groth had been sexually victimized as children. (Garrison, Jean, "Research on Rapists," National Center for the Prevention and Control of Rape, Center for Women Policy Studies, 1983.)

According to researchers Nicholas Groth and Jean Birnbaum, rapists are categorized into three categories: (1) the "power rapist" uses rape as an opportunity to assert his dominance and sexual prowess. He generally plans the rape and engages in an elaborate fantasy in which the victim is finally overcome with passion; (2) the "anger rapist" does not plan the attack beforehand and is generally much more violent. The "anger rapist" may often be displacing anger toward women in general, or toward a particular woman, onto the victim; (3) the "sadistic rapist" often mutilates or kills his victim. Such a man finds satisfaction or pleasure in abusing, degrading, humiliating, and sometimes destroying his victim. (id.)

C. Legal issues

Force and consent

Force and/or lack of consent is an essential element of the crime of rape. Each state defines force and lack of consent in similar ways, each requiring either—actual use of physical force; the immediate threat of bodily harm or death; the threat of kidnapping the victim or any other person; the threat to retaliate in the future against the victim or any other person; and a combination of the above.

Also, in a number of jurisdictions the victim does not give his/her consent when (1) the perpetrator through surprise or concealment is able to overcome the victim, or (2) where the victim is mentally incapacitated, or (3) where the victim is unaware sexual intercourse is occurring, or (4) where the perpetrator had administered a substance which impairs the victim's ability to control his/her conduct, or (5) where the victim submits because he/she erroneously believes that the perpetrator is his/her spouse. (id.)

Admissible and inadmissible evidence

A majority of states have enacted statutes which make inadmissible, with certain exceptions, evidence of the victim's prior sexual conduct on the issue of consent. However, some state statutes allow evidence of the victim's prior sexual conduct to be used at trial to test the victim's credibility, but only on cross examination. These provisions are known as "rape shield statutes" because their purpose is three-fold: (1) to protect the victim from harassment and humiliation at trial, (2) to encourage the victims of rape to report and prosecute sex offenses, and (3) to prevent time consuming and distracting inquiry into collateral matters at trial. (id.)

Marital rape

Black's Law Dictionary defines rape as, "The act of sexual intercourse committed by a man with a woman not his wife and without her consent, committed when the woman's resistance is overcome by force or fear, or under other prohibitive conditions."

Current state laws vary widely in the extent to which they protect spouses from nonconsensual sexual activities at the hands of their mates. A majority of states have a statutory provision which provides spousal immunity to the husband. But in a number of these states this spousal immunity is eliminated when the couple is (1) living apart, (2) has filed for divorce, (3) has filed for separate maintenance, or (4) has filed for a legal separation. A small number of states provide a statutory provision which totally abolishes spousal immunity. States which maintain spousal immunity do so due to the difficulty of proving the marital rape offense and the possibility of fabricated complaints. (Sooy, Kathleen, "Rape Reform Legislation: State and Federal Law," CRS Report, August 1983.)

Spousal immunity to prosecution for rape does not protect a man from prosecution for other physical violence used to force intercourse without her consent. Nor, in most cases, does spousal immunity cover any act other than normal vaginal intercourse.

The Sexual Assault Act, passed by Congress in 1986, amended the U.S. Criminal Code by establishing gradations of "sexual assault" and eliminating the term "rape." As part of this process, the spousal immunity for rape was also eliminated from the federal code.

The civil suit

Increasingly the civil suit has been utilized by victims because they were not getting results through the criminal justice system. A civil suit may be an effective way for victims to recover damages from their assailants or from those individuals and institutions who may be held accountable for their safety. In a civil suit a woman can achieve two important goals that are not available to her in the criminal courts. She can receive restitution for her own injury and she can achieve control over her own life by initiating a legal action in which she is the plaintiff. Presently, rape victims are suing not only their assailants but a variety of third parties, and third-party liability is being recognized by the civil courts. Third parties have included apartment owners and manager, institutions including schools, universities, hospitals, and prisons, buses and subways, and public and government facilities, and have been sued for improper security of the facility, inadequate lighting, locks, supervision, and other forms of security. ("The Civil Suit: An Alternative for Rape Victims," Response, Center for Women Policy Studies, August, 1983.)

D. Attitudes and problems of the criminal justice system

"Roughly one-half of the rape reports women brought to the Philadelphia police in the mid-1970's were not treated as rape cases: only 53.8% were listed as rape complaints in the statistics the police sent to the FBI. This is just one indication that there is a pervasive belief within the criminal justice system, despite the lack of support in evidence, that many "rapes" are merely false accusations . . . Reform of rape laws will not improve the system's handling of these cases as long as this attitude permeates the criminal justice system—and all indicators show that it does." ("Rape and Women's Credibility," Harvard Women's Law Journal, Spring 1987.)

"A mid-1970's study observed that two of the most significant reasons for a woman's decision to not pursue cases against her attacker are to avoid the ordeal of pressing charges and a feeling that the man's denial, rather than her accusation, would ultimately be believed." (id.)

Police may take four actions when they do not believe a rape victim's story: (1) they may "lose" or otherwise not record the rape report; (2) police may record the incident as a noncriminal "non-offense charge" such as "suspicious circumstances;" (3) they may label the incident as a less serious charge, such as assault or indecent exposure; (4) they may mark the case "unfounded," which is supposed to be done only after an investigation shows that no offense occurred or was attempted—rape reports are, however, sometimes listed as unfounded without any investigation. (id.)

"Police have been accused of marking cases as unfounded when they simply do not like the individual woman or group to which she belongs. The Philadelphia study suggests that poor women, women of color, prostitutes, and those dependent on alcohol or drugs are more likely to have their cases ignored by the police. (id.)

"Overweight women also encounter substantial prejudice and hostility when reporting rape. Police in Philadelphia often did not believe obese women when they reported being raped; two out of every three obese victims had their rape complaints classified as unfounded. (id.)

The concept of "victim precipitation" also contributes to disregard of rape reports. Victim participation assumes that the victim was in some way responsible for or contributed to the incident by (1) aggreeing to sexual relations but then withdrawing consent; (2) not reacting strongly enough against the offender; (3) using what could be interpreted as indecency in language and gestures or what could be taken as an invitation to sexual relations. This reflects a view of woman as seductress and has been used to excuse men from responsibility for rape and sexual aggressiveness towards women. (id.)

DISTRICT ATTORNEY OF KINGS COUNTY
MUNICIPAL BUILDING
BROOKLYN, N.Y. 11201
(718) 802-2000

ELIZABETH HOLTZMAN
DISTRICT ATTORNEY

December 21, 1987

Select Committee on Children,
Youth, and Families
385 House Office Building Annex #2
Washington, D.C. 20515

District Attorney Elizabeth Holtzman recently testified before the House Select Committee on "Women, Violence, and the Law." During her testimony, she referred to the large percentage of males 11 to 20 who kill the men who abuse their mother. This statistic originally came from a fact sheet provided by the Family Violence Project in San Francisco. Subsequent research indicates that the statistic is no longer considered reliable.

I would appreciate it if this fact were made part of the hearing record.

With best wishes,

Sincerely,
Elizabeth Schroeder
Elizabeth Schroeder
Special Assistant
District Attorney

ES:yf